(20,690.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 298.

MATEO CARIÑO, PLAINTIFF IN ERROR,

vs.

THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

INDEX.

	Original.	Print.
Writ of error	*a*	1
Citation and service	*c*	1
Application for the registration of title	1	2
Amendments to petition	5	4
Amendments to petition	6	5
Decision of the court	8	6
Appeal to court of first instance	18	11
Answer of United States	19	12
Answer of Government of Philippine Islands	21	13
Reply to answer of United States	22	14
Reply to answer of Government of Philippine Islands	24	15
Supplemental petition	25	16
Supplemental petition	27	17
Motion to strike from supplemental petition	28	18
Statements of counsel	29	18

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 25, 1908.

	Original.	Print.
Testimony of Mateo Cariño	31	20
John F. Reavis	43	28
Lorenzo Lorena	48	30
H. P. Whitmarsh	53	33
Igorrote Binoan	59	37
Francisco Belancio	61	38
Nels Peterson	64	40
Igorrote Piraso	66	41
Igorrote Ayaman	68	42
William F. Pack	69	43
Esteban Milo	79	49
E. L. Pulver	83	52
C. L. Simson	88	55
M. A. Clarke	90	56
Mateo Cariño (recalled)	95	59
Juan Cariño	98	61
Mateo Cariño	109	67
Juan Cariño (recalled)	130	79
Capitan Piraso (recalled)	133	81
M. A. Clarke (recalled)	135	82
Ygmedio Octaviano	146	89
Applicant rests	151	91
Testimony of Igmedio Octaviano	151	91
Igorrote Bayeng	152	92
George Hayward	157	95
G. C. Smith	181	110
Offers of exhibits, &c	194	118
Testimony of Mr. Hayward (recalled)	197	120
Plaintiff's Exhibit A—Map	199	120
Applicant's Exhibit Q—Certified copy of expediente	201	121
R—Certified copy of expediente	203	122
S—Certified copy of expediente	206	123
T—Certified copy of expediente	208	124
U—Certified copy of expediente	210	125
V—Certified copy of expediente	212	126
W—Certified copy of expediente	214	127
X—Certified copy of expediente	217	128
Y—Certified copy of expediente	219	129
Z—Certified copy of expediente	221	131
Government's Exhibit A—Diagram	223	131
Defendant's Exhibit B—Map	224	132
Government's Exhibit D—Letter of Wm. F. Pack to clerk, September 11, 1903	226	133
Letter of A. Bassett to clerk, June 28, 1904	229	134
Defendant's Exhibit E—Statement	230	135
F—Statement	232	136
Government's Exhibit G—Certificate from Bureau of Archives	234	137
H—Deposition of Manuel M. Miranda	239	139
Deposition of P. S. Black	243	142
Defendant's Exhibit O—Map	253	147
Opinion and judgment of court of first instance	255	148
Certificate to bill of exceptions	296	178
Opinion of supreme court by Willard, J	297	179

	Original.	Print.
Judgment of supreme court	304	184
Notice of petition for writ of error	305	184
Petition for writ of error	306	185
Assignment of errors	307	185
Order allowing writ of error	309	186
Writ of error (copy)	310	187
Citation (copy)	312	187
Bond on writ of error	313	188
Stipulation as to record	316	189
Clerk's certificate and return to writ of error	317	190

a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment in a case which is in the said court before —, or some of you, wherein Mateo Cariño, of the Province of Benguet, appears as plaintiff, and the Insular Government of the Philippine Islands, as defendant, a manifest error has happened to the great damage of the said Mateo Cariño as by his complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the plaintiff aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you may have the same at Washington on the thirtieth day of April, next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of
b the Supreme Court of the United States, the 4th day of January, in the year of our Lord one thousand nine hundred and seven.

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

The foregoing writ of error is allowed.

CHARLES A. WILLARD,
Associate Justice of the Supreme Court of the Philippine Islands.

[Stamped:] Supreme Court of the Philippines, clerk's office. Filed Jan. 4, 1907.

c THE UNITED STATES OF AMERICA, *ss:*

To the Attorney General of the Philippine Islands, Greeting:

You are hereby cited and admonished to appear at the Supreme Court of the United States, to be holden at the City of Washington on the 30th day of April, next, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the United States, wherein Mateo Cariño, of the Province of Benguet, is plaintiff in error, and the Insular Government is defendant, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected and speedy justice be done to him in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 4th day of January, in the year of our Lord one thousand nine hundred and seven.

CHARLES A. WILLARD,
Associate Justice of the Supreme Court of the Philippine Islands.

Receipt of above citation is hereby admitted and service thereof accepted this 4 day of December, 1906.

GEO. R. HARVEY,
Ass't Attorney General.

[Stamped:] Supreme Court of the Philippines, clerk's office. Filed Jan. 4, 1907.

1 UNITED STATES OF AMERICA, *Philippine Islands:*

Application for the Registration of Title.

To the Honorable Judge of the Court of Land Registration:

I Mateo Cariño, the undersigned, through my duly authorized attorney in fact, Metcalf A. Clarke, hereby apply for registration under the provisions of the Land Registration Act of the following described property, of which I am the sole owner:

1. Parcel of land without buildings situate in Ipit and Lumbas, within the jurisdiction of the Municipality of Baguio, Province of Benguet, Philippine Islands, bounded and described as follows:

Beginning at the corner of Main Street and Emerson Road a point located carefully by bearings to several permanent points and marked with a five feet iron bar driven solid into the ground mark A as per sketch on plan, thence on a bearing of S. 30 0′ E. 34.646 meters to the 2 Mile Stone on the Road Side; thence on a bearing of N. 24 50′ W. 52.20 meters to the corner mark 1; thence on a bearing of N. 66 30′ E. 17.00 meters; thence on a bearing of N. 77 30′ E. 44.00 meters mark 3; thence on a bearing of N. 9 21′ E. 16.18 meters mark 4; thence on a bearing of N. 42 0′ E. 79.60 meters mark 5; thence on a bearing of N. 78 55′ E. 51.00 meters mark 6; thence on a bearing of N. 64 18′ E. 25.00 meters mark 7; thence on a bearing of 49 13′ E. 60.00 meters mark 8; thence on a bearing of S. 54 35′ E. 29.0 meters mark 9; thence on a bearing of S. 72 40 E. 190.0 meters mark 10; thence on a bearing of S. 5 55′ E. 19.60 meters mark 11; thence on a bearing of S. 25 33′ E. 53.0 meters
2 mark 12; thence on a bearing of N. 85 40′ E. 185.0 meters mark 13; thence on a bearing of N. 30 33′ E. 120.0 meters mark 14; thence on a bearing of N. 12 18′ E. 120.0 meters mark 15; thence on a bearing of N. 7 0′ E. 94.0 meters mark 16; thence on a bearing of S. 27 50′ E. 107.10 meters mark 17; thence on a bearing of N. 46 42 E. 100.40 meters mark 18; thence on a bearing of N. 68 35 E. 188.0 meters mark 19; thence on a bearing of S. 82 24′ E. 23.50 meters mark 20; thence on a bearing of S. 54 30 E. 257.0

meters mark 21; thence on a bearing of S. 16 30′ E. 76.0 meters mark 22; thence on a bearing of S. 18 20′ W. 144.40 meters mark 23; thence on a bearing of S. 26 24′ W. 500.0 meters mark 24; thence on a bearing of S. 43 30′ W. 66.0 meters mark 25; thence on a bearing of S. 2 5′ W. 250 meters mark 26; thence on a bearing of S. 36 0′ W. 41.40 meters mark 27; thence on a bearing of S. 43 15′ W. 296 meters mark 28; thence on a bearing of S. 51 47′ W. 206.0 meters mark 29; thence on a bearing of S. 38 51′ W. 68.0 meters mark 30; thence on a bearing of S. 61 56′ W. 253.0 meters mark 31; thence on a bearing of N. 66 17′ W. 350 meters mark 32; thence on a bearing of N. 53 34′ W. 175.0 meters† mark 33; thence on a bearing of N. 48 27′ W. 178.0 meters mark 34; thence on a bearing of N. 44 16′ W. 76.0 meters mark 35; thence on a bearing of N. 43 0 W. 170.0 meters mark 36; thence on a bearing of N. 49 30′ E. 270.0 meters mark 37; thence on a bearing of N. 57 28′ E. meters† degrees 48′† 200.0 mark 38; thence on a bearing of N. 59 E. 110.0 meters mark 39; thence on a bearing of N. 16 15′ W. 52.60 meters mark 40; thence on a bearing of N. 4 0′ E. 200.0 meters to the starting point 0; containing a superficial area of 146 hectares and 74 areas, as shown by the plan attached.

2. That the value of the said described property, according
3 to the last real estate assessment, is $1680.00 U. S. Currency.

3. That so far as I know there are no liens or encumbrances of any kind upon said property, or any person or persons claiming or possessing an interest therein.

4. I acquired the title to said property through inheritance from my forefathers, who have been in possession of the same in good faith for four decades last past.

That lacking a written title to such property and needing some proof of ownership I availed myself of the privileges and dispositions of the mortgage law and applied to the Court of First Instance of the 3rd Judicial District, asking a possessory information for such land, which was granted to me by the Court on February 22, 1901.

5. That said property is now actually occupied by the undersigned Mateo Cariño.

6. The name and address of the occupant of a portion of the adjoining land is Sr. Piraso, Baguio, Benguet. I have not been able to ascertain the barrio in which said Piraso lives, and, furthermore, I am informed the Igorotes have but one name, as in the present case.

7. The name and address of the adjoining owner of part of the property applied for is Piraso, Baguio, Benguet.

8. That I am married, the name of my wife being Bayora Ortez. My name, age, residence and address are as follows: Mateo Cariño,
50 years of age more or less, Baguio, Benguet, Philippine Islands.

4 That the name, age and residence of my attorney in fact etcalf†

[† In pencil in copy.]

are: M A. Clarke, 35 years of age, residing at No. 2 Callo Padre Faura, Ermita; post office address No. 2 Escolta, Manila, Philippine Islands. That he is married, the name of his wife being Maria Basaro; Manila, June 22. 1903.

(Signed) METCALF A. CLARKE.

List of Documents Accompanying the Application.

1. Power of attorney executed by Don Mateo Cariño in favor of Metcalf A. Clarke, May 23, 1903.
2. A certified copy of the possessory information proceeding had by Don Mateo Cariño for a tract of land situate in Ipit and Lumbas, jurisdiction of the Pueblo of Baguio, capital of the Province of Benguet.
3. The plan of the property of Mateo Cariño referred to in the application.

UNITED STATES OF AMERICA,
PHILIPPINE ISLANDS, *Province or City of* ——, *ss:*

I certify that the above named —— —— personally appeared before me and that to my knowledge he is the person who signed the foregoing application and declared, under oath, that the matters stated therein of his own knowledge are true, and that as to matters told on information and belief, that he believes them to be true. He exhibited to me his cedula certificate issued in Manila, May 12, 1903, No. 150028.

(Signed) J. R. WILSON,
Clerk of the Court of Land Registration.

[Seal which reads: Court of Land Registration, Philippine Islands.]

5 UNITED STATES OF AMERICA, *Philippine Islands:*

Expediente No. 87.

MATEO CARIÑO, Applicant.

petitions†

The undersigned respectfully [asks]* the Court of Land Registration to admit the following amendments to the map in the above entitled expediente:

1st. From the mile stone monument N. 24° 50′ W. a distance of 52.20 met-s to the point of beginning, "0," which was not inserted in the map.

2nd. The course of the line 4-5 which appears in the map as E. 42° 0′ E., should be N. 42° 0′ E.

Manila, Oct. 29, 1903.†

D. PICTON DAVIES, *Surveyor.*

[*Word enclosed in brackets erased in copy.]
[†In pencil in copy.]

CITY OF MANILA, 29 *of Oct.*, 1903.†

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

I, D. Picton Davies, after being duly sworn, declare that the measurements contained in the preceding certification are exact and true and conform to the measurements which I personally took on the lands.

D. PICTON DAVIES,
Qualified Surveyor.

Subscribed and sworn to before me this 29th day of October, 1903, the affiant exhibited no personal cedula being exempt on account of age.

J. R. WILSON,
Clerk of the Court of Land Registration of the Philippine Islands.

[Seal of the Court of Land Registration.]

6 UNITED STATES OF AMERICA, *Philippine Islands:*

Court of Land Registration.

Expediente No. 87.

MATEO CARIÑO, by His Attorney in Fact, METCALF A. CLARKE.

The applicant, by his undersigned attorney in fact, appears before this Honorable Court and respectfully [asks]* prays† that the following amendments to the original application in the above entitled expediente be admitted:

1. The lineal measure of the line 16-17 is 107.60 mts.
2. The lineal measure of the line 23-24 is 500 mts.
3. The area is 146 Hect. 74.25 Areas.

Manila, 25th November, 1903.

METCALF A. CLARKE.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

25th November, 1903. I hereby certify that Metcalf A. Clarke, who has appeared before me, is known to *be* to be the person who signed the foregoing application, having stated under oath that what is contained therein is true of his own knowledge, and as to what is stated therein on information and belief, he believes to be

[*Word enclosed in brackets erased in copy.]
[†In pencil in copy.]

true. The applicant exhibited personal cedula No. 150028, issued at Manila 12th May, 1903.

JOSÉ MORENO LACALLE,
Deputy† [*Auxilliary*]* *Clerk of the Court of Land Registration of the Philippine Islands and ex-Officio Notary Public.*

[Seal of the Court of Land Registration of the Philippine Islands.]

7 UNITED STATES OF AMERICA, *Philippine Islands:*

Court of Land Registration.

I hereby certify that the foregoing is a true and faithful copy of the application, technical description and measurements L. D. Nos. 675 and 827 attached to Expediente No. 87 of Mateo Cariño; and upon the petition of Mr. Haussermann, attorney, I issue the present certificate at Manila on the 12th May, 1905.

J. R. WILSON,
Clerk of the Court.

After due process and notice, testimony was taken and hearing had in said application, and on the 4th day of March, 1904, a judgment was entered by said Court of Land Registration approving such petition and directing and ordering the registration of the title to the land above described and as prayed for therein. The said judgment was in the following words and figures:

8 UNITED STATES OF AMERICA, *Philippine Islands:*

Court of Land Registration.

In the Matter of Expediente No. 87. MATEO CARIÑO, Applicant.

Decision of the Court.

The applicant in this case, Mateo Cariño, seeks registration of some three hundred seventy (370) acres of land, situate in the Municipality of Baguio, Province of Benguet, basing his title upon prescription and upon possessory information proceedings taken in the Court of First Instance, Province of La Union, in 1901. The application is contested by the Government of the Philippine Islands and by the Military authorities of the United States on the ground that the land still belongs to the public domain, the claim being that title thereto has never legally vested in the applicant. A portion of the land in question was reserved by the President of the United States as a military reservation, under date of October 10, 1903.

[*Word enclosed in brackets erased in copy.]
[†In pencil in copy.]

Upon the hearing evidence was offered showing that the land in controversy was first fenced and occupied by the grand-father of the applicant, who used it to pasture live-stock and in a small way for raising camotes and palay. Upon his death the land passed to the father of the applicant and then to the applicant, the usual Igorrote ceremonies attendant upon such transmission having been observed. The applicant and his brother, the latter of whom gave his age as fifty (50) years, testified that their grandfather died before
9 their birth, which testimony finds corroboration in the record.

The father of the applicant died something over twenty years ago, since which time the applicant has used the land for grazing purposes. It is the general understanding among the inhabitants of Baguio and vicinity that the land in question belongs to the applicant. While there is some intimation in the record that the land belongs, or belonged, to the Cariño family as Igorrote chieftains, rather than as individual owners, the testimony is quite clear that they claimed it as their personal holding and not in trust for others. With the great area of unoccupied public domain surrounding them, freely available to the general public, it is extremely improbable that the Cariño family would have gone to the trouble and expense of fencing and maintaining this particular tract, except with the idea of devoting it to their own uses.

It appears that up to a time subsequent to the American occupation (1900), the old trail crossing the land was closed at either end by a gate or bars, and that the fence, which then surrounded the property, was in good condition. Shortly afterward the new Dagupan-Baguio wagon-road was built through the land and the applicant was told or became impressed with the idea that he could not fence across it. He testified that a fence which he did build across such road was taken away. About the same time or earlier most of the cattle upon the land died of rinderpest and the others were taken away. No effort, apparently, has been made to keep the fence in repair since that time, although the applicant testified that he still has a few head of horses grazing there.

No written title to the land was ever issued to the applicant or his predecessors in interest by the Spanish Government. It is in evidence, however, that the applicant made an effort to secure
10 a written title to the property under the provisions of the Royal Decree of February 13, 1894, having filed a petition with the Governor of the Province, to that end, and paying a fee therefor. Nothing whatever appears to have been heard of the petition, although the applicant was assured that no one could take the land from him.

In 1901 the applicant took out a possessory information title in the Court of First Instance of La Union Province, under the provisions of the Mortgage Law. In fact he appears to have done what he could, considering all the circumstances, to assert and maintain his rights in the property. While there are conflicts in the evidence, they involve minor points and are explained, in great measure, by the fact that the declarations of most of the witnesses passed through two interpretations. The following facts may be said to be clearly established by the record:

First. That the land in controversy was fenced and occupied by the grandfather of the applicant over fifty (50) years ago, and was used successively by him, by the father of the applicant and by the applicant as pasture for live-stock and formerly for raising, in a small way, camotes and palay.

Second. That the father of the applicant died over twenty (20) years ago, transmitting the property to his son, the applicant, with the formalities and ceremonies customary to the Igorrotes in such cases.

Third. That the land was claimed and used by the Cariño family as individual owners and not in trust for the people as chieftains, the fact of such individual ownership being generally understood and recognized among the inhabitants of Baguio and vicinity.

Fourth. That the applicant maintained the fence surrounding the property until some time in 1900, when, by reason of
11 the death of most of his cattle from rinderpest and the opening of a public road through the land, such fence was no longer repaired; a few horses, however, are still pastured upon the property.

Fifth. That the applicant endeavored to secure a written title to the property under the Royal Decree of February 13, 1894, but through no default upon his part such title was not issued.

Sixth. The applicant took out a possessory information title to the property under the Mortgage Law in March, 1901.

Seventh. That no formal concession of the property to the applicant or his predecessors in interest, was ever made by the Spanish Government.

The use and occupation of the property for something over forty-four years preceding American occupation having been established, the only question in the case is whether such occupation vested title in the occupants as against the Spanish Government. It is apparently conceded by all parties that under the laws of Spain title can be acquired against the State by prescription. The Supreme Court of Spain, in the case of Francisco Aragan Gonzalez, April 16, 1881, states as follows: "Whereas Law VII, Title 29, Partido 3, erroneously cited in the sixth ground of the appeal, is not applicable, nor could it have been infringed by the decision since amongst other things declared by said Law as not subject to prescription there is no mention of real property belonging to the State, which, as a legal personality, is subject to the prescriptions of the common law, and it is not lawful to attribute to it exceptions and privileges that are not granted it by law." (See also Sanchez Roman, Derecho Civil, Volume 3, Page 256.)

12 If the law of Spain governing prescription of State lands was applicable to the Philippines, and such law was not modified in essential particulars as regards the land in question, it is evident that title thereto vested in the Cariño family prior to the change of sovereignty. Such authorities as the Court has been able to examine indicate that the law of Spain, in the matter of prescription, did apply to the Philippine Islands.

Law XIV, "Recopilacion de Indias," cited by the Military Government, wherein is expressed the will of the Spanish Crown as regards its colonial possessions, provides that taxes shall be collected from those having good titles, apparently meaning written titles, "as also such as hold by a just prescription." The various Royal Decrees issued by Spain affecting lands in the Philippines, apparently recognized, also, the right to acquire lands by prescription as against the State. Practically all of them provide different periods within which such prescriptions shall be effective.

Section 1932 of the Civil Code, provides that "rights and actions shall extinguish by prescription to the prejudice of all kinds of persons, including judicial persons, in the forms prescribed by law." Reading this section in the light of Spanish law and the decisions of its Courts, it is not believed it was intended to exclude the State from the effects of this prescription. The Supreme Court of Spain, in the case already cited, speaks of the State as a "legal personality," subject to the provisions of the common law as regards prescription. The Code makes no express exception of the State, which would presum-tively leave the common law applicable. That such law is applicable to the Philippines and that Crown lands in the Islands are subject to prescription, was expressly recognized in the Royal Decree of February 13, 1894. The latter part of Sec. 13 21 of such decree provides that "persons in possession not included in the provisions of this chapter, can acquire prescriptive title to alienable crown lands only according to the common law." It appears from the commentators that this period, as against the State, is thirty years. (Sanchez Roman, Volume 3, Page 263. Ley 7, Title 29, Partido 3.)

Prescription, in its effect against the former owner of the land, operates as a grant, and once having applied the title becomes absolute in the adverse holder. Sanchez Roman, Vol. 3, Page 262, states that "solely by the passage of the time fixed in each case by law, there is a conclusive presumption of abandonment upon the part of the proprietor and a change of ownership in favor of the adverse holder."

The American and English Encyclopedia of Law, Volume 1, Page 883, referring to adverse possession says: "By adverse possession of land for the statutory period of limitations, the adverse holder acquires a title in fee simple which is as perfect as a title by deed; its legal effect is not only to bar the remedy of the owner of the paper title, but to divest the estate and vest it in the party holding adversely for the required period of time, so that he may maintain an action of ejectment for the recovery of the land even as against the holder of the paper title who has ousted him."

If the above construction of the law be correct, then the use and occupation of the land in controversy for forty-four years by the applicant and his predecessors in interest, vested absolute title thereto in them. It is contended by the defendants, however, that whatever rights might have accrued to the Cariños in this regard, were lost through failure upon their part to secure composition of title under

the Royal Decree of June, 1880, or to secure a possessory
14 information title under the Decree of February 13, 1894.
The Court does not so construe the decrees in question. The father and grandfather of the applicant had occupied the land in question for over twenty years previous to June 25, 1880. If the fact of fencing and using the land as a pasture and making small plantings of camotes and palay thereon could be construed as "cultivation" of the land, within the meaning of Article 5 of the Decree, then title vested in them without further. All persons coming within the provisions of Articles 4 and 5 were considered "owners for all legal purposes." The regulations do not appear to contemplate a "composition of title" upon their part; in fact Article 6 expressly excludes them when prescribing the procedure to be followed by other classes of occupants in securing title. If an attempt had been made to sell the lands of persons included within Articles 4 and 5, it would have been a sufficient defense to show that they were within the provisions of such articles. On the supposition, however, that the lands were not cultivated within the meaning of the law, and that the Cariño family might have secured composition of title but neglected to do so, the Court finds nothing in the decree stopping the ordinary running of the prescription period. It is provided by Article 8, that as to all those persons who might profit by the act but failed to do so, the State would reassert its title to the property and proceed to its sale by public action.

What the decree in question did (and in this it was similar to others), was to hold out special inducements to occupants of public lands that they might be persuaded to secure a record title for their holdings. It was a special modification of the prescriptive period in favor of the occupants. As an added spur it was provided that as
to all those coming within the conditions who neglected to
15 take out title, the State would reassert its right and sell the
property. This was not a repeal of the law permitting title to be acquired by prescription, as is clearly evidenced by the last paragraph of Article 21, Decree of February 13, 1894, already quoted. It meant simply that as to such lands, exempt for a time from the usual limitations, the State would again be free to exercise its rights.

As an illustration, suppose the Cariño family, on the date in question (June 1900), had been in possession of the lands for twenty-six years, without cultivation. Notwithstanding that this occupation would not have given them title by prescription, they could secure composition of title under paragraph 6, Article 6 of the decree. Failing to do this within the time and in the manner provided, the property became once more subject to sale or other disposition by the Government. Under the illustration there can be no doubt whatever but that the Government, had it so desired, would have had a right to sell the Cariño holding in 1882, and subsequently until title vested in the occupants by regular prescription. The property was not sold, however, and the title vested by prescription in due course.

Under this view of the law it is not necessary to consider the effect

of the decree of February 13, 1894, nor of the possessory information proceeding instituted in 1901, the title at that time having prescribed in favor of the Cariños. It was desirable, of course, that the applicant get his property of record, which was the principal object of possessory proceedings.

It was the policy of Spain to encourage the occupation and cultivation of public land and to induce the occupants to make
16 their title a matter of record. It is the express policy of the present Government to respect the rights of all natives of the Islands who are in active use and occupation of lands and who have spent time and effort thereon, whether they hold a record title to such lands or not. The provisions of Chapter 6, Act 926, Philippine Commission, establish the most liberal provisions to protect the interests of the actual occupants and possessors of land.

The objections filed in this case by the Government of the Philippine Islands and by the Military Authorities of the United States, are disallowed, and registration decreed in favor of the applicant for the land described in the application.

The costs will be for the account of the respective parties incurring same.

[SELLO.] D. R. WILLIAMS.
(Firmado.)

Es cópia verdadera de que certifico:
[SEAL.] J. R. WILSON,
Escribano del Tribunal.

17 In these proceedings the Government of the Philippine Islands and the Government of the United States of America, by their respective representatives, appeared as adverse claimants. It was stipulated by and between the counsel of the respective parties and with the consent of the Court that the proceedings in this cause should be conducted in the English language.

On the 30th day of March, 1904, the Government of the Philippine Islands and the Government of the United States of America, severally entered and perfected an appeal to the Court of First Instance of the Province of Benguet, and on the 26th day of April, 1904, said appeal was duly docketed in said Court. The said appeal was in the following words and figures:

18 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Co-rt of Land Registration of the Philippines.

In the Matter Concerning the Petition of MATEO CARIÑO for the Registration of á Piece of Land Situated in the Town of Baguio of the Province of Benguet.

The Acting Attorney General in behalf of the Government of the Philippine Islands and also in behalf of the Commanding General of the Division of the Philippines, as representative of the United States of America, appears before this Honorable Court and states:—

That he appeals to the Court of First Instance of the Province of Benguet, District of the Mountains, from the decision rendered by this Honorable Court in the matter above mentioned whereby the opposition formulated by the Government of these Islands and by the Military authorities of the United States are denied, and the registration of the land in question in favor of the petitioner is granted; and asks that the Court order that there be issued in his favor a certified copy of the petition and the documents accompanying the same as also the evidence presented and the decision rendered with the object of presenting the same before the Court of 1st Instance.

Manila March 28th, 1904.

(Sgd.) GREGORIO ARANETA,
Acting Attorney General.

We are hereby notified of the filing of the above petition and acknowledge receipt of copy of the same.

(Sgd.) COUDERT BROTHERS,
Attorneys for the Petitioner.

19 On the 9th day of May, 1904, the Government of the United States of America filed its answer to the foregoing application, as follows:

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of Benguet Province.

In re Application of MATEO CARIÑO to Register Title to Land Situated in Baguio, Benguet Province, P. I.

Answer.

And now comes the Acting Attorney General, Special Attorney for the United States in the above entitled action, and as an answer to the petition filed in this cause.

I.

(*a*) Admits the allegations contained in paragraphs 2 and 8 of said petition;

(*b*) Denies each and every allegation contained in paragraphs 3, 4 and 5;

20 (*c*) And as to the allegations contained in paragraphs 1, 6 and 7, states that he has no knowledge or information sufficient to enable him to [from]* a belief as to their truth or falsity, and he therefore denies the same. form†

[*Word enclosed in brackets erased in copy.]
[†In pencil in copy.]

II.

And as a further and separate answer the undersigned Attorney of The United States says that on the 10th day of October, 1903, the property described in the petition herein was property belonging to the public domain, and that on the said 10th day of October, 1903, the President of the United States did reserve for military purposes the following described property situated in Baguio, Benguet province, P. I.:

"Beginning at a stone monument 20 feet North of the center of the Baguio and Dagupan Wagon Road, about two miles from Baguio, where an old trail to the sawmill leaves the road; thence North 55° East, for a distance of 527 feet, to stone monument; thence North 9° West, for a distance of 729 feet, to stone monument; thence North 71° 3′ East, for a distance of 2,324.3 feet, to stone monument; thence North 59° East, for a distance of 623 feet, to stone monument; thence South 45° 53′ East for a distance of 2,679.6 feet, to stone monument; thence North 73° 53′ East, for a distance of 365.6 feet; thence South 4° West; for a distance of 4,850 feet, to stone monument; thence West, 2,305 feet, to stone wagon† monument 20 feet East of center of the Baguio and Dagupan Road; thence Northerly, following the sinuosities of the Baguio and Dagupan Wagon Road, 20 feet East of center of same, to stone at point of beginning. Area, 535.63 acres, more or less," a part of which said property lies within the land described in the petition for registration filed herein.†

Wherefore, the undersigned attorney on behalf of the United States prays that registration of that part of the property
21 described in the petition which is within the bounds of the property reserved for military purposes of the United States be denied.

(S'g'd) GREGORIO ARANETA,
Special Attorney for the United States.

On said 9th day of May, 1904, the Government of the Philippine Islands filed its answer to the foregoing application, as follows:

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of Benguet Province.

In re Application of MATEO CARIÑO to Register Title to Land Situated in Baguio, Benguet Province, P. I.

Answer.

And now comes the acting attorney General, attorney for the Government of the Philippine Islands, in the above entitled action, and as an answer to the petition filed in this cause;

[† In pencil in copy.]

I.

(*a*) Admits the allegations contained in paragraphs 2 and 8 of said petition;

(*b*) Denies each and every allegation contained in paragraphs 3, 4 and 5;

(*c*) And as to the allegations contained in paragraphs 1, 6 and 7, states that he has no knowledge or information sufficient to enable him to form a belief as to their truth or falsity, and he therefore denies the same.

II.

And as a further and separate defense the undersigned at-
22 torney in behalf of The Government of the Philippine Islands says that the property described in the petition filed herein is land belonging to the public domain for which no grant or deed has been made to the petitioners or to any other person, and no confirmation of the possession of the petitioners or any other person has been made as against the said government.

Wherefore, the undersigned on behalf of the Government of the Philippine Islands prays that registration of the said property be denied.

GREGORIO ARANETA,
Acting Attorney General.

Said cause came on for trial *de novo* before the Court of First Instance of the Province of Benguet on the 24th day of May, 1904, and on said date the applicant asked leave of the Court to file the following as a reply to the answer filed in behalf of the Government of the United States of America:

(Title of Court and Cause.)

Now comes the applicant, by his counsel, and for reply to the answer filed herein, for and in behalf of the United States of America.

I.

Admits that a part of the land described in the petition herein is within the boundaries of that certain tract of land described in the order of the President of the United States, dated October 10, 1903, relating to the reservation of a certain tract for military purposes.

23 II.

(*a*) For a second and further ground of reply this Applicant alleges that on the 10th day of December, 1898, the land described in the petition was not a part of the public domain of the Kingdom of Spain and did not, by the Treaty of Peace of said date, become a part of the public domain of the United States of America or of the Philippines, but said land for the time immemorial has been and is now a private property.

(*b*) That the Order of the President of the United States dated October 10th, 1903, reserving certain tracts of land for military purposes in so far as the same affects that part of the land described in the petition within the boundaries of the tract of land described in said order is void and of no force and effect for the reason that the same is a violation of the Treaty of Peace of December 10th, 1898, made and entered into by and between the Kingdom of Spain and the United States of America, and contrary to the Act of Congress of July 1st, 1902, entitled: "An Act temporarily to provide for the Administration of the affairs of the Civil Government in the Philippine Islands, and for other purposes," in that said order attempted to take private property for public purposes† without compensation, and in the absence of condemnation proceedings.

COUDERT BROTHERS,
JOHN W. HAUSSERMANN,
CHAS. C. COHN,
Att'ys for Applicant.

This is to certify that on this 24th day of May, 1904, at 11 o'clock a. m., there was received at this office the foregoing document.

WM. M. BROWER, *Clerk.*

Applicant† ed†
24 ∧Also request[s]* permission to file as a reply to the answer *af* the Government of the Philippine Islands filed in this cause on the 9th day of May, 1904, the following:

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the Province of Benguet.

In re Application of MATEO CARIÑO to Register Title to Land.

Reply.

I.

Now comes the Applicant by his Counsel and for reply to the Answer of the Government of the Philippine Islands, filed herein, denies that the land described in the application or any part thereof, is a part of the public domain.

II.

Said applicant alleges that the land described in the petition and the whole thereof has been from time immemorial, private property, and is now the property of the Applicant.

COUDERT BROTHERS,
JOHN W. HAUSSERMANN,
CHAS. C. COHN,
Att'ys for Applicant.

[*Letter enclosed in brackets erased in copy.]
[†In pencil in copy.]

This is to certify that on this 23d day of May, 1904, at 11 o'clock a. m., there was received at this office the foregoing document.

WM. M. BROWER, *Clerk*,
By LUCIO ALMAZAN, *Ass't.*

Mr. BASSETT: I object to the filing of these replies as improper; Act 190 provides what pleadings shall be filed in any case, and in that Act no provision is made for the filing of a reply, except by amendment to the complaint.

Objection is sustained by the Court, to which the Applicant excepts, and an exception is granted by the Court.

The Applicant asks leave to incorporate the matter contained in each of the above so called repl[y]ies† in a supplementary petition, in the nature of an amendment to the original application filed herein: which amendment to the suplemental petition is as follows:

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of Firts Instance of the Province of Benguet.

In re Application of MATEO CARIÑO to Register Title to Land.

Now comes the applicant by his counsel, and as a supplemental petition in the nature of an amendment to his original application, states:

I.

Applicant admits that part of the answer of the United States of America filed in this cause, which alleges that a part of the land described in the petition herein, is within the boundaries of that certain tract of land described in the Order of the President of the United States, dated October 10, 1903, relating to the reservation of a certain tract of land for military purposes.

26

II.

(*a*) Applicant further states and alleges that on the 10th day of December, A. D., 1898, the land described in the petition was not a part of the public domain of the Kingdom of Spain, and did not, by the Treaty of Peace of said date, become a part of the public domain of the United States of America of the Philippines, but that said land, from time immemorial has been and is now private property.

(*b*) That the Order of the President of the United States, dated October 10, 1903, referred to by the Government of the United States of America, in its answer filed in this cause, in so far as the same affects that part of the land described in the petition herein, within the boundaries of that certain tract of land, described in said Order is void and of no effect, for the reason that the same is in violation

[*Letter enclosed in brackets erased in copy.]
[†In pencil in copy.]

of the Treaty of Peace of December 10, 1898, made and entered into the Kingdom of Spain and†
by and between ∧ the United States of America, and contrary to and in violation of an Act of Congress of July 1st, 1902, entitled "An Act temporarily to provide for the administration of the affairs of Civil Government in the Philippine Islands, and for other purposes," in that said order attempts to take private property for public purposes without compensation, and in the absence of condemnation proceedings.

COUDERT BROTHERS,
JOHN W. HAUSSERMANN,
CHAS. C. COHN,
Att'ys for Applicant.

This is to certify that on this 24th day of May, 1904, at 11 o'clock, a. m., there was received at this office the foregoing document.

WM. M. BROWER, *Clerk,*
By LUCIO ALUGAN, *Assistant.*

27 Applicant also herewith asks permission to file a supplementary petition in the nature of an amendment to the answer filed for and in behalf of the Government of the Philippine Islands, in this cause, on the 9th day of May, 1904, which supplemental petition in the nature of amendment, is as follows:

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the Province of Benguet.

In re Application of MATEO CARIÑO to Register Title to Land.

I.

Now comes the applicant, by his counsel, and for a supplemental petition in the nature of an amendment, in reply to the answer filed on the part of the Government of the Philippine Islands, denies that the land described in the application, or any part thereof, is a part of the public domain.

II.

Said applicant alleges that the land described in the petition and the whole thereof, has been from time im-emorial, private property and is now the property of the Applicant.

COUDERT BROTHERS,
JOHN W. HAUSSERMANN,
CHAS. C. COHN,
Att'ys for Applicant.

[† In pencil in copy.]

This is to certify that on 24 day May, 1904, at [on]* 11 a. m., there was received in this offs. the above application.†

NOTA.—Hago constar que hoy veinticuatro de Mayo de mil novecientо y cuatro á las once de la mañana, se ha recibido en esta Escribanía la precedente aplicacion de que doy fe.

WM. M. BROWER, [*Escribano,*]*
Clerk,†

By†
[Por]* JUCIO ALUGAN, [*Delegado,*]*
Assistant Deputy.†

28 Comes now the Attorney General and presents the following:

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the Province of Benguet.

In the Matter of the Application of MATEO CARIÑO for the Registration of Certain Lands.

Motion.

Comes now the Acting Attorney General, Special Attorney for the United States, and moves this Honorable Court to strike from the supplementary complaint of the petitioner, the following: That of paragraph (*a*) of Section II contained between the words "and did not" in the third line of said paragraph, and all of paragraph (*b*) of Section II of said supplemental petition, because the said parts of said petition are statements of conclusions of law.

GREGORIO ARANETA,
Special Attorney for the United States,
By BASSET, *Assistant Attorney.*

The COURT: Motion to strike is overruled.
Exception†
[Objection]* granted to the United States and Philippine Islands.
Mr. HAUSSERMANN: If you please, we desire to avail ourselves of that part of Section 4 of Act 496, which requires that all competent testimony which has been taken in writing before the Court of Land Registration, be used in the trial of the Court of First
29 Instance; we desire the testimony to be our case.
Mr. BASSETT: If your Honor please, I would like to suggest that your Honor will have to read this testimony for the purpose of knowing our objections to the testimony. I would suggest, therefore, that the testimony be read in Court, as there are certain questions which I think are incompetent and which I wish to object

[*Word enclosed in brackets erased in copy.]
[†In pencil in copy.]

way†
to on that ground; I would like to have it read the same [was]* as a deposition so that objections may be entered.

Mr. HAUSSERMANN: If your Honor please, we deny that the Counsel for the Government, at this time, can interpose any objection to any question. When this trial was held in the Court of Land Registration, both the Government of the United States and the Philippine Islands were represented by Counsel, and questions were asked and not objected to and answers were made, and under the provisions of the Land Registration Act, that testimony may be used at the trial of this cause, and we take it that any objections should have been made at the trial below.

Mr. HAUSSERMANN: If the Court please, we desire to say that this matter was taken up by me with the Acting Attorney General, and it was agreed by us verbally (not expecting that this action would take any technical phase at all) that the testimony which was introduced in the Court of Land Registration would be used as testimony up here, with the reservation that either of us may add to it, if we desire.

We desire to offer in evidence the testimony of Mateo Cariño taken at the trial of this cause before the Court of Land Jurisdiction which appears on pages from 30 to 41 inclusive; also testimony of John F. Reavis, taken in the same cause at the same trial, before the same court, which appears on pages from 42 to 45 inclusive of the record; also the testimony of Lorenzo Larena, which appears on pages 46 to 50 inclusive; also the testimony of H. P. Whitmarsh, which appears, commencing at bottom of page 50 to and including the upper half of page 56 of the record; also testimony of Igorrote Binoan, which appears at the bottom of page 56, to and including page 57 of the record; also testimony of Francesca Belancio, commencing at bottom of page 57, to and including the upper half of page 60 of the record; also testimony of witness Nelse Peterson which is recorded, commencing at the bottom of page 60, to and including the upper portion of page 62 of the record; also testimony of Igorrote Piraso, commencing at the middle of page 62 and including page 63 of the record. Also testimony of E. L. Pulver, commencing at the bottom of page 78 to and including page 82 of the record. Also testimony of C. L. Simson, commencing at page 83, to and including the upper portion of page 84 of the record; also testimony of M. A. Clarke, commencing at the bottom of page 84 to and including the upper portion of page 89 of the record; also testimony of Mateo Cariño recorded commencing at the bottom of page 89 to and including page 96; also testimony of Juan Cariño, recorded on page 9 to and inclusive of page 100.

30

Also testimony of Igorrote Oyaman com. at p. 64 to & including upper part of p. 74 of the record.†

I desire to state, professionally, that in a conference with Judge Araneta, the Acting Attorney General, of the Philippine Islands,

[*Word enclosed in brackets erased in copy.]
[†In pencil in copy.]

it was agreed by and between Judge Araneta, acting for and in behalf of the Government of the United States and the Government of the Philippine Islands, and I, acting for the applicant, that all the testimony taken at the trial before the Land Registration court, and all the papers contained in the Record of the said court,
31 will be used and submitted to the Court of First Instance, as evidence in said case, each of said parties reserving the right to introduce any additional evidence, in event either of said parties desire to do so.

Mr. BASSETT: I shall offer no objection to the admission of the testimony in view of the agreement that has been entered into by the Acting Attorney General.

The testimony was presented and admitted, transcribed and copied by order of this Court, because of the mechanical imperfections in the depositions received from the Court of Land Registration, the same being in an indistinct and imperfect carbon duplicate, is as follows, viz:

Testimony of Mateo Cariño, Appearing on Pages 30 *to* 41, *Inclusive.*

MATEO CARIÑO, the Applicant, presented as witness by Mr. Haussermann, after being duly sworn, testified as follows:

Q. Where do you live?
A. Baguio.
Q. How long have you lived in the Province of Benguet?
A. Cannot State how many years.
Q. Where were you born?
A. Tublay, Province of Benguet.
lived†
Q. Have you ∧ in the Province of Benguet all your live?
A. Yes.
Q. Where was your father born?
A. Trinidad, Benguet.
Q. Did your father live during the whole of his live in Benguet?
A. Yes.
Q. Is your father dead now?
A. Yes.
32 Q. Where did he die?
A. Tublay.
Q. Do you know when did he died?
A. When the Spanish Commander Oraa was in charge of the Province, cannot remember haw many years ago.
Q. Haw large were you when your father died?
A. I was grown and married.
Q. Where was your grandfather born?
A. In the barrio of Lubas, jurisdiction of Baguio.
Q. Do you know where he died?
A. In the barrio of Lubas.
Q. Was he buried in Lubas?

[† In pencil in copy.]

A. No; he was buried in the neighborhood of Baguio.

Q. Do you know whether or nor he was burried on the land in question?

A. He was not burried on this land.

Q. Did your father live upon the land which you are attempting to register?

A. My grandfather lived on this land.

Q. Are you the owner of that land?

A. Yes.

Q. How long have you owned or possessed this land?

A. In the time of Oraa I inherited this land from my father.

Q. How long was your father the owner and in possession of that land?

A. I cannot state how many years—my father told me never to let this land go but to hold it always.

Q. Did your father own this land for more than thirty years?

A. I do not know—he was in possession a long time, because he lived on the land and built his home there.

Q. Did your grandfather own that land, and was he in possession during his live time?

33 A. I do not know, but I inherited this land from my father.

Q. During your father's lifetime did he make any statement as to how he came to own the land?

A. My father told me to hold this land because it was an inheritance from his father.

Q. Is that land enclosed—is there a fence around it?

A. It is fenced.

Q. Was it fenced when you received it from your father?

A. Yes.

Q. Did your father have cattle upon that land during his life time?

A. Yes; and I inherited some cattle from him.

Q. Did your father have carabao upon that land?

A. No; horses and cattle.

Q. Did sweet potatoes grow upon part of that land?

A. Part of the land near the river was planted with camotes (potatoes).

Q. When was the road that now runs through the land put there?

A. In the time of Mr. Whitmarsh.

Q. After the Americans came here and before the road was put there did you post any notice on the land showing that you claimed it as owner?

A. Yes; I placed some posts and sent to San Fernando to arrange for the registration of the land.

Q. When did you put those notices on the posts? Was that done before the military came here?

A. Yes; before the arrival of the American troops I placed written notice on the property claiming it as my own.

Q. Do you know Mr. Otto Shearer who used to live there?

A. Yes, sir, I know him.

34 Q. Did he write those notices for you?
A. Yes; he wrote them.
Q. And did you post them up yourself?
A. Yes, sir; I posted them personally.
Q. Were they posted on the gate that led into that land?
A. Yes; I placed those notices there.
Q. Did an American or white man go upon those lands and prospect and live on there for a time?
A. Yes; there was an American who went on the land and built a house.
Q. Did you notify him that you owned the land and then put up the notices?
A. Yes; I told him not to cut any timber on that land—it was mine; and at the same time I sent to Governor Whitmarsh and told him about it.
Q. Where did you live when your father died?
A. In Baguio, on the land where Mr. Whitmarsh's store now is.
Q. When your father died, how was that land received by you?
A. This land was delivered to me by my father and *by* father-in-law who was also one of the owners of the land.
Q. What is the custom among the Igorrotes in this part of the country when a man dies and land is transferred to another—do they have a "cañao," and did they have it in this instance?
A. When my father was about to die he delivered this land to me, and I called the old people—the "principales" of the place—to witness this delivery; and I gave a fiesta.
Q. Was this land owned by you or did your father before you own it for more than thirty years *years?*
A. It was a little over thirty years that my father and grandfather were in possession of this land before the arrival of the Americans.
35 Q. Can you tell approximately how many years it has been since you- father died?
A. No; I do not know.
Q. Were you married when your father died?
A. Yes, sir.
Q. How many childred did you have at that time?
A. Two.
Q. How many childred have you now?
A. Nine.
Q. Are any of them dead?
A. One of them.
Q. Are the children who were living at the time of your father's death living now?
A. Yes; they are living now; Sioco and Josefa.
Q. Which is the older?
A. Sioco.
Q. How large was Sioco when your father died?

(Witness indicated about three feet.)

Q. Where are your children?

A. Sioco is in my house; two are in Manila.
Q. The children you have in Manila are boys?
A. Yes.
Q. What are they doing in Manila?
A. They are in school.
Q. How long have they been in Manila attending school?
A. The older one has been there two years; the younger one a year.
Q. Is the college they attend a pay-school?
A. Yes, sir, I pay ten dollars.
Q. Have you any other property than that in question?
36 A. Yes; the land where my house is, but the documents of this land are already completed.
Q. Did you make any objection when the military authorities came and took possession of part of the land now in question?
A. I spoke to the military about it but they did not believe me.
Q. When did you tell them?
A. I told them that I was the owner of the land, but they did not believe me, but afterwards they went away.
Q. Did you put the fence across the road after the road was built there, and was it then torn down by some one?
A. I placed a fence but they took it away.
Q. Is there a sawmill located on that land?
A. Yes.
Q. Was the saw-mill placed there against your objection?
A. Yes; I went to the Governor and complained but the Governor told me that I should not object to this machinery being placed there for it was not to cut timber but to saw it.
Q. Have they not, as a matter of fact, [out]* cut† timber since that machine was there?
A. They have not felled any timber, but they have used the trees already down.
Q. Where is this land in question situated?
A. In Lubas.
Q. Do the Igorrote people who have lived in this vicinity for a number of years know and recognize that the land in question is your land?
A. Yes; they know I am the owner of this land.

Cross-examination by Señor PAREDES:

Q. What was the name of your grandfather?
37 A. Banglay Milog.
Q. Did you know your grandfather during his life time?
A. No.
Q. Then you never saw your grandfather?
A. No.
Q. Who died first, your father or grandfather?

[*Word enclosed in brackets erased in copy.]
[†In pencil in copy.]

A. Grandfather.
Q. How many children did your grandfather have?
A. Three.
Q. What were their names?
A. Langbis, Sialong and Padlo.
Q. How many children did Pablo Cariño have?
A. We were eight.
Q. Were these eight children of the same marriage?
A. Yes, sir.
Q. Which of these eight is the oldest?
A. Juan Cariño.
Q. Is Juan still living?
A. Yes.
Q. And the other brothers are still living?
A. A sister died.
Q. Do you remember who was the last Spanish Governor of Benguet District?
A. Antonio Bejar.
Q. You referred in your direct testimony to Governor Oraa. From the time of Oraa to the time of Bejar, how many Spanish Governors were there?
A. A great many.
Q. You stated the land was fenced. What kind of fences are there?
38 A. Earth fence, and when I had cattle there, a wire.
Q. Then this land is now partly fenced with earth and partly with wire?
A. Now there are no wires but only earth fence.
Q. When did you place the wire fence?
A. In Spanish times.
Q. And when did you take it down?
A. A short time ago.
Q. Did you take down that wire fence before filing your application or afterward?
A. After filing my application.
Q. What kind of fences were there on the land when you inherited it from your father?
A. Earth fences.
Q. Who placed the earth fences around the land?
A. My grandfather.
Q. Do you still have the cattle that used to be on this land?
A. The cattle died during the epidemic; I still have some horses.
Q. How many horses have you there now?
A. Seven mares and one stud.
Q. Have you had those horses on the land a long time?
A. From the beginning I had a mare on this land which I inherited. I also had more than twenty head of cattle that were inherited.
Q. Of all the stock that your father had, did you inherit only one mare?
A. Yes, sir; the other horses were distributed among my brothers.

Q. The eight mares and one stud that you now have on this land—were they also inherited from your father?

A. Two of those horses I bought, and the remaining six I inherited from my father.

39 Q. To what use did your father put this land?

A. It was used for pasturing cattle and a small part was used for camotes.

Q. And you have been using it for the same purpose since inheriting it, until the present time?

A. For pasture only.

Q. Do you have any herdsmen to look after the horses on this land?

A. My son takes care of them. When I had many cattle I had herdsmen.

Q. What became of the cattle your formerly had?

A. They all died of rhinderpest during the time of Governor Whitmarsh.

Q. Do you remember the time when the insurrection against Spanish authority broke out here?

A. I remember it, but do not remember it in what year.

Q. At the time of that insurrection did you have any cattle on this land?

A. Yes, I had many.

Q. And the cattle you had—were they not taken by the insurgents?

A. Yes; I gave part of our cattle to the insurgents, and also to the Americans.

Q. When did you lose the last head of cattle you had on this land?

A. The last head of cattle were used at the time of Governor Whitmarsh. I had four cattle left, and on account of the rhinderpest they were sent away.

Q. Since then this land ceased to be used by you for pasture purposes?

A. Yes; since the road was opened and since the gate was torn down, I drove my cattle away from this land.

Q. Who ordered the opening of this road to which you

40 refer?

A. The Civil Government.

Q. How wide is this road that passes through your land?

A. Two brazas—about 12 ft.

Q. Who advised you to place those written papers on the land giving notice of your claim to it?

A. Mr. Whitmarsh advised me to place those notices.

Q. Did Mr. Whitmarsh tell you to do this before the opening of the road or afterwards?

A. Before opening the road.

Q. Was Mr. Whitmarsh Governor of the Province when this road was opened?

A. Yes, sir.

Q. You stated that you knew Mr. Otto Shearer?

A. Yes, sir.

Q. Did you have any conversation, agreements or transactions about this land with Mr. Shearer?

A. I did not have any transactions about this land.

Q. Who was then Provincial Secretary?

A. Mr. Shearer.

Q. Did you have any other conversation with Mr. Shearer about this land.

A. No.

Q. Did not Mr. Shearer tell you that the land in question would acquire a high value after a time?

A. Mr. Shearer told me to place notices on this land.

Q. Didn't Mr. Shearer advise you to take out possessory information title on this land?

A. By advise of Mr. Shearer I took out possessory information in San Fernando, and when I consulted with Mr. Whitmarsh, he also told me it was advisable.

41 Q. Is it not true that Mr. Shearer not only advised you to take out such proceedings, but that he attended to it in San Fernando?

A. Yes; and he also accompanied me to San Fernando where the Court was sitting.

Q. What interest did Mr. Shearer have in this registration?

A. He did not have any interest.

Q. Did he not have an interest in this business when you have stated he attended in person to the proceedings in San Fernando?

A. Yes; he accompanied me because he was going to San Fernando to have title to his own land registered.

Q. Do you remember who were the witnesses you produced in San Fernando in those proceedings?

A. Yes; their names were Damsis and Yatno—both have since died of cholera.

Q. What relationship did you bear to these witnesses?

A. I was not related to them.

Q. Do you know Mr. Reavis, a miner?

A. I know him.

Q. Since when have you known him?

A. Since the American occupation.

Q. Is he the man whom you have stated erected a house on the ground which you claim?

A. No; it was another.

Q. Have you never been out of the Province of Benguet to live?

A. No, sir; I have moved to my rice fields some times.

Q. Have you rice fields outside of the Province of Benguet?

A. I have none outside of the Jurisdiction of Gaguio.

Q. To whom does the saw-mill belong on your land?

A. Mr. Wagner, a clerk in the office of the Provincial Governor.

Q. When did you first see Mr. Clark, who has an option to purchase the ground in question?

42 A. In the time of Mr. Whitmarsh.

Q. Were these notices which you placed on the land in question posted after you first saw Mr. Clark?

A. I posted them before seeing Mr. Clark.

Q. Did you ever know or see an American named General Bell?
A. I saw him once.
Q. Was this before or after posting the notices?
A. After posting the notices.
Q. Has Mr. Clark an option for purchasing this land?
A. When Mr. Clark took a walk on the property he asked me if I wanted to sell the land; I answered yes, because I have no cattle there now.

(Mr. HAUSSERMANN:)

Q. Did your grandfather die before you were born?
A. Yes; he died a long time before I was born.

The JUDGE:

Q. You have declared that this property was inherited from your father and father-in-law. What interest did your father-in-law have in this land?
A. My father, who was married in Tublay, left this land in charge of my father-in-law and told me before his death, to reclaim this land from my father-in-law.
Q. Did your father-in-law also pasture cattle on this land?
A. No; only my father, because my father-in-law had his pasture land here in Baguio.
Q. Did you inherit other land from your father—other than this in question?
A. I inherited a piece of rice land besides this.
Q. Where is the rice land?
43 A. In Pias.
Q. How did you acquire the property where you now live?
A. I acquired this property as an inheritance of my wife.
Q. Do you claim to own any of the land adjacent or bounding the land now sought to be registered?
A. No; the owners would not allow it.
Q. Did any of your brothers or sisters inherit property from your father?
A. Yes; they inherited the land in Tublay; it belonged to our mother, and also lands in Trinidad.
Q. Did your father pasture his cattle on other ground than that now in question?
A. He used to pasture his cattle on his land in Tublay, and that was the reason why he made me marry in Baguio.
Q. Did your father use the land lying between where you now live and the land in question?
A. No, sir.

Mr. PAREDES:

Q. Is your wife still living?
A. Yes, sir.
Q. Can you tell us more or less how many parcels of land your father left upon his death?
A. My father left two tracts of land.

Testimony of Joh- Reavis, Found on Pages 42 to and Including Page 45.

JOHN F. REAVIS being first duly sworn, testified as follows:

44 (Mr. HAUSSERMANN):

Q. How old are you?
A. Forty three years of age.
Q. What nationality?
A. Texan—American.
Q. When did you arrive in the Philippine Islands?
A. In the early part of December, 1899.
Q. What is your occupation?
A. Prospector.
Q. When did you arrive in Baguio Province?
A. In September, 1900.
Q. Have you been living here since?
A. Yes, sir.
Q. Do you know the land claimed by Mateo Cariño, which is now being attempted to register?
A. To some extent, I do.
Q. State whether or not, upon your arrival in Baguio, you heard who claimed the land in question.
A. I heard that Cariño owned the land.
Q. Did you at any time, after your arrival here, occupy any part of that land?
A. I took up a squatter-claim on this creek where the bridge is, calculating that the creek was the center of my claim. I built my house on this side of the creek which would not have been on the ground. (The creek is boundary line of land)
Q. How soon after you built your house did you hear that Mateo Cariño claimed the land across the creek?
A. Very shortly after that.
Q. Did you then move off?
A. I did.

45 Q. Did you notice whether or not the land was enclosed in any way?
A. There was a gate at this bridge, on this side, and some bars near a little creek on the other side of the land on the trail.
Q. What other kind of enclosure, if any, did you notice?
A. A pilapil (earth) fence, and in one place I saw some barbwire.
Q. What is the character of that land?
A. I should say it was grazing or agricultural land.
Q. Did you observe any notice on any part of that land?
A. I did.
Q. What kind of notice?
A. It was a typewritten notice that this ground was owned by Cariño—the land lying between this gate and the bars on the other side.
Q. There was a notice at each gap?
A. Yes.

Q. Were these gates put up at a trail running through the land?
A. Yes; it was trail.
Q. That was before the road, that is there now, was built?
A. Yes, sir.
Q. These notices were placed where?
A. At the gate or near it; I believe the post on this side a short distance from the gate.
Q. Did the enclosure you saw there at the gate appear to be an old gate or one recently constructed?
A. Evidently it had been there for some time; could not say how long; it was not new.
Q. Did you notice any stock there at any time before those gates were taken down?
A. I saw some cattle and carabaos and horses at different times I passed through.
46 Q. They were grazing there?
A. Yes, sir.

Cross-examination by Mr. PAREDES:

Q. How long have you known Mateo Cariño?
A. I cannot say just the first time I met him. I became acquainted with him by sight first, and gradually met him here and there. I am not very well acquainted with him now.
Q. You have a definite knowledge that the land referred to here, belongs to Cariño, or only by information.
A. By hearsay only.
Q. How long did you live in that hut you referred to?
A. About a month.
Q. Does that hut still exist?
A. The present road is excavated just at the side of the place where this hut was built—it takes away the foundation.
Q. How far was this hut from the creek you mention?
A. About one hundred yards.
Q. Do you know the name of the creek?
A. I do not remember.
Q. What place is known to you on or near the creek?
A. The saw-mill is one place I know; it is on this creek three hundred yards below where my hut was built.
Q. When you built your hut, did you build it with the intention of remaining there?
A. I built it under what is known as a squatter-claim.
Q. Do you remember when you built this place?
A. Some time, I think, in December, 1901.
47 Q. Why did you abandon that place so soon?
A. Because I was within the two mile limit of Baguio. They prohibited me taking land within the two mile limit of the Tribunal; the two mile limit, as near as I could figure it, came to the creek. If I could not occupy this side, neither could I occupy the other side, as it belonged to Cariño.

land†

Q. Who informed you that the ∧ within a two mile limit of the tribunal was reserved?

A. There was a notice on the door of the tribunal.

Q. That notice you read in 1901?

A. I think it must have been in 1901.

Q. Who signed that notice?

A. I think Governor Whitmarsh.

Q. Was it written in English or Spanish?

A. I am not certain, but I think it was both—I am not sure of that.

Q. Do you remember more or less, what that notice contained?

A. That was the substance of it—that land could not be taken within a two mile limit of the tribunal.

Q. And that notice was posted on the door of the tribunal?

A. On some part of the tribunal.

Q. Please state the places where you have prospected as a miner.

A. I have prospected from Seoul to Suyoc—all through the mountains.

Q. How long did you prospect those places?

A. I have not terminated yet.

Q. You built the hut to which you referred?

A. Yes, sir; it was a small hut.

Q. Was that hut erected in a place where it would be visible to people traveling to and from Baguio?

A. Not unless they were close observers; the hut was in sight of the road, however, at one place.

48 Q. Were you living in that hut when they opened the new road?

A. No; I have left there before that.

Q. How far was that hut erected from what is now the new road?

A. It was immediately under the road bed.

Testimony of Lorenzo Larena, Found — Pages 46 to and Including Page 50.

LORENZO LORENA, being first duly sworn, testified as follows: Sixty-six years of age; married; carpenter; resident of Trinidad.

Mr. HAUSSERMANN:

Q. How long have you lived in that province?

A. Thirty-four years.

Q. Were you in Baguio during these thirty four years?

A. Yes, sir.

Q. Do you know Mateo Cariño?

A. Yes, sir.

Q. How long have you known him.

A. Since I came to this province. I knew his parents also. He was a young man.

[† In pencil in copy.]

Q. Do you know the land claimed by Mateo Cariño at Lubas?
A. Yes, sir.
Q. Who owns the land known as Lubas?
A. I saw first living on that land the grandfather of the wife of Mateo Cariño, and also her father. They had a little house and were taking care of some cattle, and also some camotes.
Q. What was the relationship between the grandfather of Cariño's wife and grandfather of Mateo Cariño?
A. According to what I have heard they were brothers.
Q. Is this land enclosed?
49 A. It was partly fenced; it was not completely fenced. All the pathways were closed with trees to prevent the cattle going outside.
Q. What kind of fence was around it?
A. I did not say that all the land was completely closed—I noticed when I passed that all the pathways were closed with some kind of fence, some of them of earth and others of wood.
Q. Was it generally recognized, in this neighborhood, that the land in question belong- to Cariño?
A. I do not know.
Q. How long -as Mateo Cariño been in possession of that land under claim of ownership, to your knowledge?
A. I think he has been occupying that land for over twenty years,—since the dead of his father-in-law.
Q. Do you know when Mateo's father died?
A. Nearly twenty years ago he died in Tublay.
Q. Was the father of Mateo Cariño in possession of that land before his death, under claim of ownership?
A. As Mateo's father was living in Tublay, I do not know whether this land was owned by his father or his father-in-law. The father-in-law was present taking care of it—I know the father-in-law was on the land.
Q. What was on the land?
A. Cattle.
Q. Was part of it cultivated?
A. Only small portions of it with camotes.
Q. Do you remember the "cañao" that was held just before the death of the father of Mateo, when this land was delivered to Mateo?
A. No, sir.
Q. Do you remember the death of his father?
A. I do.
50 Q. Do you remember if any "cañao" was celebrated at this time?
A. Yes, sir; in Tublay; because it is our custom to do so when a person dies.

Crossexamination by Mr. PAREDES:

Q. During the thirty four years you have been in the province of Baguio, have you been residing in Baguio or Trinidad?
A. I have always resided in Trinidad during the thirty-four years.
Q. What was the age of Cariño when you first knew him?

A. He was abo-t twelve or thirteen years old.
grand-†
Q. When you knew him was his ∧ father still living?
A. No, sir.
Q. Do you remember when Mateo Cariño's father died?
A. Yes, sir.
Q. Can you state the year?
A. I do not remember the year, but from calculation I think it was about twenty years ago.
Q. Have — been holding some public office in Trinidad?
A. Yes, sir.
Q. What office have you held?
A. I have been gobernadorcillo in Trinidad ten years.
Q. Is it true that at the time of the death of Mateo's father he notified you of the fact that he inherited the Lubas land?
A. Yes, sir.
Q. In what form did he give you notice?
A. I was advised verbally, because at that time they did not notify by writing.
51 Q. Who else was given notice by Mateo Cariño of this fact?
A. Notice was given to several. I do not remember the names.
Q. Do you know the area of the land to which you refer?
A. Yes, sir.
Q. When you stated that this land was fenced you referred to the present time or the time you first knew the land?
A. The former time, as I do not know it now.
Q. When was the last time when you saw this land?
A. The last time was when Governor Whitmarsh told me to point out to the choppers the timber that was going to be used for the quarters of the soldiers.
Q. In what year was this?
A. Last year.
Q. Was Mr. Whitmarsh still Governor when he sent you to this land?
A. No, sir.
Q. When you went to this land for the purpose indicated, did you notice whether there were animals on the land?
A. I saw some horses—nothing more.
Q. You saw this same fence on this land?
A. I saw some fences along the road, but none inside.
A. What kind of fence?
A. Earth fence.
Q. On that occasion did you see any cultivated land?
A. No.
Q. Did you see any other kind of plantation?
A. No, sir.
Q. When did you know this land for the first time?
A. More than thirty year- since I knew that land.

[† In pencil in copy.]

Q. When and why did you know the land?

A. I became acquainted with the land because I used to
52 visit Mateo Cariño's father-in-law and they used to invite me to call on them.

Q. How many times have you visited this land?

A. I do not remember now, but many times.

Q. And on those several occasions you were on the land you did not have a chance to know its area?

A. No, sir.

—. Did you know Mateo Cariño's father intimately?

A. Yes, sir.

Q. Can you state how many tracts of land he left to his children when he died?

A. I can state some but not all. In Tublay he left property to Juan; in Trinidad he left a piece to his daughter, and this of Lubas to Mateo.

Q. The different times when you went to this land, did you see many cattle?

A. Yes; I saw three kinds of cattle, carabaos, cattle and horses.

Q. How many carabaos did you see?

A. As I remember it over fifty, some seventy or eighty cows and about thirty horses.

Q. Are you sure there were more than fifty carabaos?

A. Yes, sir.

Q. What has become of those carabaos?

A. At the time Mr. Whitmarsh was Governor I do not think there were many left because most of them died?

Mr. HAUSSERMANN:

Q. Do you mean to be understood that there were no other fences there than those along the road, or was that all you saw?

A. I cannot state whether the land was entirely fenced or not, because I never had occasion to go around the land and I only noticed what I saw on the road.

53 JUDGE:

Q. Did any other person than Mateo place their cattle to pasture on this land?

A. No, sir.

Testimony of H. P. Whitmarsh, Found on Pages 50 *to and Including Page* 56.

H. P. WHITMARSH, being first duly sworn, testified that he was forty-one years of age; resident of Baguio; occupation store-keeper.

Mr. HAUSSERMANN:

Q. When did you first arrive in Baguio?

A. In January, 1900.

Q. How long did you stay there at that time?

A. About a month.

Q. During that time did you learn to know Mateo Cariño?

A. Yes, sir.
Q. When did you next arrive in Baguio?
A. October, 1900.
Q. When you first arrived, did you hold any official position?
A. No, sir.
—. Did you the second time you arrived?
A. No, sir.
Q. How long did you remain the second time?
A. I remained permanently.
Q. When were you appointed Governor of the Province?
A. November 29, 1900.
Q. Did you know the land at Lubas, which is in question here, alleged to be owned by Mateo Cariño?
A. Yes, sir.
54 Q. When did you first know that land?
A. January, 1900.
Q. When did you first learn that land was claimed by Mateo Cariño?
A. January, 1900.
Q. How did you get that information?
A. When I was first here I went to Lauacan, and in passing through the gates, through which you had to go to get into his property, I asked the guide who was with me, why it was fenced, and he said it was land that belonged to Mateo Cariño.
Q. Was the guide from this neighborhood?
A. From Trinidad.
Q. Did you learn subsequently that it was generally conceded in the neighborhood here that the land belonged to Mateo Cariño?
A. Yes, sir.
Q. How was the land enclosed?
A. Enclosed by a pilopil or sod fence for the most part, and other parts with fallen trees. There were certain parts of the property that were not fenced, but as to those nature had provided places through which the cattle could not go.
Q. From January, 1900, to the present time has Mateo Cariño been in possession of that land under claim of ownership, so far as you know?
A. Yes, sir.
Q. Do you know, whether or not he objected to that road being put through, or that he made known his claim to that land when the road was being built?
A. No.
Q. Do you know of any fence that he put across the road after it was built?
A. No.
55 Q. During the time that you knew that land has anybody else been in possession of same under claim of ownership other than the military and civil authorities?
A. A man named McDonald squatted there and started to built a house.
Q. Did he stay there long?

A. No; Cariño complained to me about it. I was then Governor. I told McDonald and he abandoned it.

Q. During all the times that you were in the province as Governor, did Mateo openly and notoriously claimed to be in possession and to own the land in question?

A. He did.

Q. Was it recognized by the neighborhood here, especially the natives of this province, that he was in fact the owner of that land and in possession of it?

A. Yes, sir.

Q. What kind of land is it—how would you describe it in [pur]* our† language?

A. Grazing and agricultural land.

Q. Not what you would call mineral land?

A. No, sir.

Q. Do you know how many acres it contains?

A. Between 300 and 400 acres.

Q. Do you know the value of agricultural land in its vicinity?

A. At the present time, according to sales I have made, it has brought $100. gold.

Q. Would you consider $100 gold to be a fair and reasonable value of the land in question here?

A. I should think it was.

Q. Do you — of any land in the vicinity here being sold for $100 per acre?

A. Yes, sir; I have sold some land at that price.

56 Q. How does the value of the land at present compare with the value of same prior to American occupation?

A. The value has enhanced greatly because it can be used now for building purposes.

Q. Has the value of the land increased very materially during the past year?

A. Yes, sir; from $60 to $100 gold.

Q. What governmental acts, if any, increased materially the value of land in this vicinity?

A. The commencement of work on the new road was one thing, and then the law which the Commission passed making this the summer capital increased it further.

Q. In your opinion about what per cent. increase has there been in the value of land from the time you first arrived here and now?

A. Land when I came here was worth but little because it was so far from all communication.

Q. In your judgment what could an acre of vacant land have been purchased for at that time?

A. It depended upon where it was. A year after I got here I bought land for $10 Mexican in the barrio where I live near Suizod.

[*Word enclosed in brackets erased in copy.]
[†In pencil in copy.]

Q. Taking that as a basis for the value of land, what would be the reasonable value of land at that time?

A. I think I paid a fancy price for it at that time. There were the†
many people like Shearer who had secured [a]* land a year before for nothing. The Igorrotes did not consider it of great value.

Q. At that time you considered $10 Mexican per acre for land in the vicinity of Baguio, to be a fancy price?

A. It was a good price.

57 Cro-s-examination by Mr. PAREDES:

Q. When did you cease to be Governor of Benguet?

A. November, 1901.

Q. During the time you were Governor was work on the new road begun?

A. Yes, sir.

Q. In your direct testimony you mentioned a path and gates which you had to pass necessarily?

A. Yes, sir.

Q. Is it not that path where the new road has been opened?

A. The new road has been opened in a different place—quite near however.

Q. Does the path still exist?

A. Yes, sir.

Q. Then it was a public way?

A. It was a regular trail for Igorrotes, except the gates which were each side of the property.

Q. And you passed on that trail the first time you were in Baguio?

A. Yes, sir.

Q. At that time every person traveling went by the trail also?

A. Not necessarily, because this country has trails all over it. That is the main trail to Loachan, but not the only trail one could take.

Q. Why was it necessary for you to go by that trail?

A. I went the trail purely by choice and because that was the way I was guided.

Q. Did you have to ask permission of the owner to pass through that trail?

58 A. No, sir.

Q. That trail was closed at both ends?

A. Yes, sir.

Q. And at both sides along that trail was there any fence?

A. No, sir.

Q. Referring to the new road opened while you were Governor, is it certain that Mateo Cariño placed a fence in the middle of that road?

A. I do not know.

[*Letter enclosed in brackets erased in copy.]
[†In pencil in copy.]

Q. If he had placed such a fence would it have reached your knowledge as Governor?

A. I do not know that it would—at least it did not.

Q. Do you remember, as Governor of this province, of having published a notice that land within two miles of the tribunal of Baguio was reserved?

A. I issued an order to that effect. I think the distance, however, was one mile from the tribunal. I presume the notice is still on record in the province.

Q. Were you ordered by any law to make such reservation?

A. No.

Q. Then you issued it on your own initiative?

A. I issued it at the request of the Commission who expected the Spooner bill to pass in a month or two. It didn't pass.

Mr. HAUSSERMANN:

Q. Were you here at the time General Bell went through?

A. I entertained General Bell when he was here.

Q. Did you have any conversation with General Bell with reference to this land in question?

A. Yes; I rode out over it with him and he thought it would be a fine place to take up as a military reservation. I told him that I thought as he did, but there might be some objection as
59 the land was claimed by an Igorrote—Mateo Cariño.

Mr. POOLE:

Q. Can you state approximately when General Bell rode over the land and expressed the idea that it would be good for a military reservation?

A. No; I cannot place the date.

Q. Do you know whether it was before or after the application of Mateo Cariño for possessory information title?

A. I should think it was before.

Testimony of Igorrote Binuan, Found on Pages 56 to 57.

IGORROTE BINOAN, being first duly sworn, testified as follows:

Didn't know his age. Agreed by counsel to be about seventy. Born in Baguio and had always lived in Baguio and vicinity.

Mr. HAUSSERMANN:

Q. Do you knoe Mateo Cariño?

A. Yes, sir.

Q. Have you known him since he was a boy?

A. Yes, sir.

Q. Did you know his father?

A. Yes, sir.

Q. Do you know land at Lubas claimed by Mateo Cariño?

A. I know that the place of Lubas belongs to Mateo Cariño.

Q. And also the place where his house is?

A. Yes, sir.
Q. How long has Mateo owned the land at Lubas?
A. I do not know.
60 Q. Did Mateo's father own the land?
A. He inherited it from his father.
Q. Is there a fence around that land?
A. The earth fence is standing but the wooden fence, composed of fallen trees, has rotted.
Q. Was the fence there when Mateo's father was alive?
A. It was fenced when Mateo inherited it.
Q. Did Mateo's father have cattle on that land—carabao etc.?
A. That land was fenced on account of the animals he had there.
Q. Did Mateo's father own that land when Mateo was a little child?
A. Since Mateo was small the father appointed him heir to this land.

Cross-examination by Mr. PAREDES:

Q. How do you know that the land at Lubas belongs to Mateo Cariño?
A. I know it because I was a neighbor.
Q. Since when did this land pass to the possession of Mateo Cariño?
A. A long time ago.
Q. Did Mateo Cariño have possession of this land while his father was still living?
A. The land was delivered to him while he was still living—when he was small.

Mr. POOLE:

Q. Was it the custom for the headmen among the Igorrotes to exercise supervision over the land for the benefit of the people or as individual owners?
A. This land belonged to Mateo Cariño's family.

61 *Testimony of Francisco Belancio, Found on Page- 57 to 60.*

FRANCISCO BELANCIO, 78 years of age, married, living at Naguilian, being first duly sworn, testified as follows:

Mr. HAUSSERMANN:

Q. Have you ever lived in Baguio?
A. Yes, sir.
Q. When did you move to Naguilian?
A. 1901.
Q. Before you moved to Naguilian where did you live?
A. In Trinidad.
Q. How long there?
A. Twenty years.
Q. Did you know Mateo Cariño?
A. Yes, sir.

Q. Did you know his father?
A. Yes, sir.
Q. Have you known Mateo since he was a child?
A. I did not know Mateo since his childhood, but I knew him in Tublay when I was Municipal Secretary.
Q. When did Mateo's father die?
A. In 1863.
Q. Do you know the land at Lubas claimed by Mateo Cariño?
A. Yes, sir.
Q. Who owns that land?
A. In the time of Mateo's father, when I came to Baguio, he told me to go and see Mateo because he had means. He had some animals in Lubas. In that way I came to know that the Lubas land belonged to Cariño.

62 Q. Did Mateo Cariño have at that time cattle on that land of Lubas?

A. In these time I have known that Mateo Cariño has some animals in Lubas; I also know that he had animals in Lubas when I was directorocillo of Baguio.
Q. When were you directorocillo of Baguio?
A. From 1898 until 1900.
Q. Did Mateo own the land when you were directorocillo?
A. That was the information I received from the Igorrotes.
Q. Have you been on that land—have you seen it?
A. I have gone through the trail sometimes.
Q. At that time did Mateo have cattle on the land?
A. Sometimes I have seen some eight cows with calves, and some three mares.

Cross-examination by PAREDES:

Q. Did you know of your own knowledge that the land at Lubas belongs to Mateo Cariño?
A. When my horse ran away he went in the direction of that land and I heard that Cariño was the owner, so I asked permission of him to go to the land and Cariño delivered me the horse.
Q. Have you any other reason for believing that the land belongs to Cariño?
A. No; there are no papers which would enable me to know it. I also understood that he had placed fences, etc.
Q. Did you see Mateo Cariño place those fences?
A. I did not see the wood placed on that land—I have seen the wire fence,—that he bought from Hollman.

63 When did you see Mateo Cariño putting up the wire fence?
A. About 1898.

Q. Do you know whether the horses and other animals you saw on that land belonged to Mateo Cariño?
A. I do not know very well. I saw some with the brand of Mateo Cariño, but the others did not have any brand, but I supposed as those horses were on his ground they belonged to him.
Q. Did you see on this land any animals bearing brands which did not belong to Mateo Cariño?

A. I cannot say if all the animals were branded because I only went through the land and when I went through I only saw a few animals.

Q. And those eight animals, were they branded with Cariño's brand?

A. No; there were three of these animals not branded with Cariño's brand.

Q. Which is the older, yourself or Mateo Cariño?

A. I am.

Mr. HAUSSERMANN:

Q. How old is Mateo Cariño?

A. In my judgment he is over forty.

Q. How many years has Mateo owned that land according to your knowledge?

A. I heard his father state that Cariño was the owner of this land—it is over thirty years ago.

Mr. PAREDES:

Q. What was the age of Cariño when his father told you this?

A. Cariño was already married and had children. In my judgment he was more or less sixteen years.

Q. And he then had two children?

A. He had only one.

64 *Testimony of Nels Peterson, to be Found on Pages 60 to and Including Part of Page 62.*

NELS PETERSON, age 32, by occupation a miner, being first duly sworn, testified as follows:

Mr. HAUSSERMANN:

Q. How long have you been in Benguet province?

A. Four years next month.

Q. Have you been in this vicinity all this time?

A. Not all the time—I have been here with the exception of about nine months.

Q. Where were you those nine months?

A. In Masbate and Mindanao.

Q. Did you know Mateo Cariño?

A. I know an Igorrote by that name.

Q. Do you know the land in question here?

A. I know of it, I think.

Q. Have you gone through the land?

A. As near as I know I have passed through the land many times since in the country.

Q. When you first arrived here and knew that land, was it enclosed?

A. There was a fence around it and a gate on the north side, and on the south side there were bars.

Q. Of what material was the main fence?

A. It was sod fence.

Q. Is the land what you would call agricultural land as distinguished from mineral land?

A. I would call it pasture land.

65 Q. It is not what is ordinarily known as mineral land?

A. So far as I know it is not. I have never prospected on it.

Q. Were those gates to which you refer, crossing the trail running through the land?

A. They were across the main trail.

Q. Were there any cattle or horses of any kind on that land as you passed through it?

A. Yes, sir; there were cattle and horses there at the different times I passed through.

Q. Did you know or did you learn after you arrived here, who was considered by the natives to be the owner of that land?

A. No, sir; with the exception that I understood that Mr. Clark had an option on it, I do not know the Igorrote which claimed it.

Q. According to hearsay who do you understand to be the owner?

A. I did not hear the name.

Q. When you first knew the land, was it before the new road was put there?

A. Yes, sir.

Cross-examination by Mr. PAREDES:

Q. In what year did you pass through the land?

A. March, 1900.

Q. Were there other trails passing through that *trail?*

A. I only passed through the one trail where the gates were.

Q. You have referred to an option which Mr. Clarke had on that land; will you state what kind of option he had?

A. I do not know anything about that except general conversation I had with miners, when I passed through here four

66 years ago, that Mr. Clarke had an option on certain property owned by an Igorrote between Baguio and Loachan.

Q. In what year did you have this conversation with the miners?

A. In 1902—the second year I was in the country.

Testimony of Igorrote Piraso, Found on Pages 62 and 63, Inclusive.

IGORROTE PIRASO, age forty, more or less, being duly sworn testified as follows:

Mr. HAUSSERMANN:

Q. Do you know Mateo Cariño?

A. Yes.

Q. Is he older than you?

A. Yes.

Q. How long have you known Mateo Cariño?

A. We were children together.

Q. Do you know land at Lubas claimed by Mateo?

A. I do.

Q. Did you know Mateo's father before he died?
A. Yes.
Q. How long has Mateo owned that land?
A. I know that Mateo inherited that land from his father. I do not remember the year.
Q. Has Mateo been in possession of that land since the death of his father?
A. Yes, sir.
Q. For what was the land used by Mateo?
A. Used to graze horses and cows and to raise camotes.
Q. Is there a fence around the land?
A. Yes, sir.
67 Q. Do the people here in this vicinity know that that land belongs to Mateo?
A. Yes, sir.
Q. Did the people know during the Spanish times and before the Americans came here that that land belonged to Mateo?
A. Yes, sir.
Q. Do you own any land in this province?
A. Yes, sir; I own the land to the north of the land owned by Cariño.
Q. Who else owns land bounding on Mateo's land?
A. Quarantes, at Loachan.
Q. Does any one else own land adjoining Mateo's land?
A. No; we two only.

Cross-examination by Mr. PAREDES:

Q. What relationship have you to Mateo Cariño?
A. I think we are cousins in the third degree.
Q. Did you know his father?
A. Yes.
Q. Was his father still living when Mateo took possession of the Lubas property?
A. Yes, sir.
Q. How many years did Mateo's father live after Mateo took possession of the property?
A. I think about ten years.
Q. Can you state who are the adjoining owners of the land in Lubas claimed by Mateo?
A. There are no other adjoining owners but Quarantes and myself and one person in Trinidad.

68 *Testimony of Igorrote Ayaman, Found on Page* 64.

IGORROTE AYAMAN, age unknown, married, living in Barrio of Bacaqui, town of Baguio, being first duly sworn, testified as follows:

Mr. HAUSSERMANN:

Q. Do you know Mateo Cariño?
A. Yes, sir.
Q. How long have you known him?

A. I do not know how many years.
Q. Did you know him when you were a child?
A. I was already grown when I knew him.
Q. When you first knew him was he married?
A. He was not married?
Q. Do you know the land in Lubas?
A. Yes.
Q. Who is the owner of that land?
A. Mateo—he received it as an inheritance.
Q. Did Mateo's father own the land before him?
A. Yes, sir.
Q. Did all the Igorrotes around here know that that land belonged to Mateo?
A. Yes, sir.
Q. Is the land enclosed?
A. Yes, sir.
Q. For what did Mateo used the land?
A. Carabaos and cows.

Cross-examination by PAREDES:

Q. Do you know that Mateo Cariño inherited the land from his father?
69 A. I know the land at Lubas belongs to Mateo because my mother told me so.
Q. Then you did not know it personally but through the statement of your mother?
A. I heard it from my mother; would not have known otherwise.

Testimony of Governor Wm. F. Pack, Found on Pages 65 to 74.

Mr. HAUSSERMANN: If the Court please, in order to expedite proceedings the applicant will rest his case for the present, with the understanding that further testimony, if circumstances seem to require it, will be presented.

This being agreeable to the representative of the Civil and Military Government, Governor WM. F. PACK was presented by Señor Paredes as a witness on behalf of the Government, and after being duly sworn, testified that he was Provincial Governor of Benguet, 42 years of age, residing in Baguio.

Mr. PAREDES:

Q. Since when have you resided in Baguio?
A. Since November 15, 1901.
Q. Have you been absent from the province of Benguet since that time?
A. On business only.
Q. Have you not changed your residence?
A. No, sir.
Q. Do you know Mateo Cariño?
A. I do.

Q. As Governor of this province do you know the land reserved for use of the Government in this province?

A. I do.

70 *Q.* The witness was shown a plan of the land claimed by applicant, filed with the application, and asked if he knew the property. He stated that he did and that the land described was within the Government Reservation.

Q. The whole of it?

A. All of it.

Q. Since you arrived in this province whom have you known as the owner of that land?

A. I have been told that Mateo Cariño had a claim to that land.

Q. When was the first time you knew this land?

A. Since my arrival in the Province.

Q. And when was the last time you saw it?

A. Yesterday.

Q. Do you know that the land described in this plan has fences?

A. I know there has been fences about parts of that ground—I do not think there was a fence all around it.

Q. When you saw it yesterday in what state did you find it—was it fenced or not?

A. It was not fenced—there were the remains of an old fence still visible.

Q. Do you know whether this land has been occupied by Mateo Cariño since your arrival in this province?

A. I do. It has not been occupied by him exclusively.

Q. What has been the nature of Mateo Cariño's occupation?

A. Pasturing stock there.

Q. At the present time has he stock there?

A. I do not know.

Q. Have you notice- the road which, according to that plan, goes through the land?

A. I have.

71 Q. Since when has this road been opened?

A. The new road was opened through this territory previous to November 15, 1901.

Q. Is the land cultivated now?

A. No, sir.

Q. There is no plantation of coffee or sweet-potatoes?

A. Not to my knowledge unless it would be in the little point described in that land which I have not visited.

Q. You stated that the land was not occupied exclusively by Mateo Cariño. Can you state by who else it has been occupied?

A. The Government, on the part of its military representatives, the army.

Q. How does the Government occupy this ground?

A. Formerly by permission of the Civil Government in Manila—afterwards, I understand, by order of the Secretary of War.

Q. And the occupation of the ground by the Military Government has come to the knowledge of Mateo Cariño?

A. Yes, sir.

Q. And has Mateo Cariño made any objections or protested against that occupation?

A. Never to me.

Q. Do you know if the Lubas land, which Cariño seeks to register has been at any time abandoned by Cariño.

A. I do not know—there has been nothing official regarding this land coming before me.

Q. From the condition of that property—from the fences you have seen—could you say whether that property has been abandoned?

A. There has been no care taken of the property whatever. As to a legal abandonment I do not know—I cannot say.

72 Q. How long is it that you have seen this land without fences in different places?

A. Ever since I have been here it has only been that much better as effected by the weather in the time elapsing.

Q. You stated that in your judgment this land would be good for grazing; would you also say that it would be good for agricultural purposes?

A. I do not think it would be good for agricultural purposes.

Q. Do you know the house of Matea Cariño in Baguio where he lives?

A. Yes, sir.

Q. How far is the land in question from this house, in a direct line?

A. About a mile and a quarter.

Q. Could you give that same distance in feet?

A. 6500 feet.

Q. Do you know from official or historical data when the capital was established at Baguio?

A. Cannot give the date.

Q. In the application there is a letter signed "Wm. F. Pack," addressed to the Clerk of the Court; will you please examine it and state to the Court if you identify it?

A. This is my letter; I sent it to Mr. Wilson.

Q. Are the contents of this letter true?

A. To the best of my knowledge; yes, sir.

Q. In that you speak of land adjoining this land belonging to different chiefs. What information have you on that subject?

A. If I remember correctly, I said that the boundary lines between the different chiefs were clearly defined, but that they are not matters of record.

73 Q. According to the information that you have, does this land belong to Cariño as a chieftain or to him as an individual?

A. I have always considered that it belonged to him as a chieftain.

Q. In the letter to Mr. Wilson you also state that a certain Mr. Clarke, taking advantage of the custom prevailing among the natives of dividing their lands among the chieftains, had this Mateo Cariño claim this property. Is this true?

A. As far as appearances go, it is a statement of the conditions. Mr. Clarke comes in and has this man take out a possessory title, for the purpose of protecting his title.

Q. Do you know of any contract between Mr. Clarke and this Igorrote concerning this land?

A. I know nothing about it.

Q. In the same letter you state that the land in question is within the reservation made by the Commission by Act 636. Is this correct?

A. Yes, sir.

Q. Do you know whether any engineer, under Act 636, has made an official survey of the land reserved by that Act?

A. I think such survey is now being made by Mr. Hayward.

Q. Is the survey already made?

A. It is not completed.

Q. Did you accompany Mr. Hayward to make that survey?

A. No, sir.

Q. State, therefore, why you consider the land in question within this reservation?

A. By a knowledge of general directions and the points that are mentioned in the Act.

Q. Are you very sure of it?

74 A. Yes; I am quite certain of it.

Mr. HUSSERMANN:

Q. Have you walked around the boundary lines of the land in question here?

A. No, sir.

Q. Then you have no personal knowledge of the proportion of that land that is actually fenced in?

A. I have not.

Q. From your investigations of conditions in this province after taking your office of Governor, state whether or not you gathered the information from the natives and other sources, that the land in question was claimed by Mateo Cariño, as owner, and had been considered by the natives here to belong to Mateo Cariño for some time prior to your coming to this province?

A. I gathered the impression that the natives considered that this was Mateo Cariño's grazing land.

Q. In that investigation you also learned, did you not, that Mateo Cariño was regarded among the Igorrotes as a wealthy man?

A. Yes, sir.

Q. That he had a very good house that in itself was worth about 4,000 pesos?

A. Yes, sir.

Q. That he had rice fields that were quite valuable?

A. Yes, sir.

Q. That he had herds of cattle and many ponies?

A. Yes, sir.

Q. That he claimed jurisdiction over mountain land for grazing?

A. Yes, sir.

Q. That he had possession of this besides the particular land that is described in his application?

75 A. Yes, sir.

Q. That on all that property, without description or specification he paid taxes to the Municipality of Baguio, Province of Benguet?

A. Yes, sir.

Q. You also found from your investigation, that he had no title whatever to any land, although he had been in undisturbed possession of the land on which he lives for nearly thirty years?

A. Yes, sir.

Q. You also reported that you felt it your duty as Governor to enter into some detail concerning the several transactions had concerning this particular land?

A. Yes, sir.

Q. Did that refer to the land now sought to be registered?

A. Yes, sir.

Q. You reported that under the Spanish Government, notwithstanding the Royal Decree of May 14, 1867, Article 8, it was the practice of the Spaniards to give no title whatever to Igorrotes?

A. Yes, sir.

Q. Therefore you reported that there were none extant?

A. Yes, sir.

Q. Do you mean by that part of your report that it was not the practice of Spaniards to give paper title, and that there were no paper titles extant?

A. That there were no grants made from the Spanish Government to the Igorrotes.

Q. You did not mean to claim that Igorrotes could not claim title under the various land laws promulgated by Spain?

A. Certainly not?

Q. You also reported that Igorrote Chieftains, like Mateo, simply by force of character maintained their dominant sway over large tracts of land in the Province of Benguet?

76 A. Yes, sir.

Q. Upon what did you base that calculation?

A. Upon my observation throughout the province.

Q. You learned from your investigation among Igorrotes that these boundary lines were sharply defined?

A. Yes, sir.

Q. You also reported that the territory of this particular headman (meaning Mateo) extended over a great many kilometers from the eastern boundary of the land described in this application, to the Irisan on the West?

A. Yes, sir.

Q. How, in view of the testimony of Mateo on the stand here and the other Igorrotes, to the effect that he claims only this tract here, would you say now regarding that statement that you were mistaken?

A. I have seen his horses on land extending from this particular tract to the Irisan, nearly twenty kilometers away.

That does not mean to say that I deny or affirm that he makes

particular claim to any particular territory, but that he herds over all that territory between this land & the Irisan.

Q. That tract of land extending twenty kilometers would include the present townsite of Baguio?

A. It would run through on the south of it.

Q. You saw those head of cattle since you were Governor?

A. Yes, sir.

Q. From your best judgment how many cattle did you see grazing over this large extent of territory?

A. I have probably seen fifty carabaos and cows at least.

Q. How do you know the cattle you saw belong to Cariño?

A. His son told me they did.

77 Q. Which son?

A. Sioco.

Q. Did Mateo ever tell you that he owned the cattle roaming around here grazing since you were Governor?

A. No, sir.

Q. Did you hear his testimony to the effect that all of his cattle and carabao died of the epidemic during Mr. Whitmarsh's term as Governor?

A. I did.

Q. Are you in possession of any facts which would prove his testimony on that point untrue?

A. I do not like the way you put that question. Mateo is a truthful man. He made a statement there which I think he misunderstood. My sanitary inspector who was vaccinating cattle because of the pest, reported to me that Mateo had about 200 cattle and Sioco about 80 cattle when he made his report to me regarding the inoculation against the pest.

Q. Then you think when he testified that all of his cattle, or practically all of them, died of the epidemic during Mr. Whitmarsh's term, that he misunderstood the question?

A. I do. I think he referred only to those in this vicinity.

Q. Then the cattle which you have reference to were not in this vicinity?

A. No; they were over the hill towards Irisan.

Q. About what distance from here?

A. From three to four miles.

Q. What is the reputation of Mateo Cariño in this vicinity, for integrity and veracity?

A. There is none better in the world. I do not care to convey an imputation against him.

78 Q. That part of your report. Governor, in which you made reference to Mr. Clarke influencing Mateo to make that possessory claim; upon what information, if any, did you base that conclusion?

A. That was not made upon any investigation, it was based upon matters of information that came to my knowledge constantly, one time after another.

Q. Is not that simply an inference which you draw from your general experience as a man in the affairs of the world, acting upon conditions peculiar to the situation in Baguio at that time?

A. Yes, sir; that was exactly what it was.

Q. It was not based then upon any particular fact that you may have acquired or any direct evidence that Mr. Clarke had, in any way, advised or influenced him to file those papers at San Fernando?

A. No, sir.

Q. When you stated in your examination in chief that this land was not good agricultural land, did you base that assertion upon the general condition of the soil in that vicinity?

A. Yes, sir; I have been unfortunate in making experiments in that soil.

Q. To properly classify that land as between mineral and agricultural land, having in mind the distinction which our Congress has made with reference to such lands, this land would be classed as pasture or agricultural land as contrasted with mineral land?

A. Some people have classed it as mineral land but I would classify it as agricultural land.

Q. Then, as I understand it, the proper classification of that land would be good pasture land?

A. Yes, sir; good grazing land.

79 Q. During all the time that you have been Governor of this Province is it not a fact that Mateo Cariño was in the exclusive possession of that land in question, except, of course, such possession as the military authorities have and the reservation made by Act 636?

A. He was; there was no one else using that land.

Testimony of Esteban Milo, Found on Page- 74 to 78, Inclusive.

ESTEBAN MILO, Igorrote, 25 years of age, married and living in Baguio, being first duly sworn testified as follows:

Señor PAREDES:

Q. Where are you employed?

A. By the Governor.

Q. Do you know Mateo Cariño?

A. Yes, sir.

Q. Since when have you known him?

A. Since I was nine years old.

Q. Do you know certain land in Lubas now sought to be registered by Cariño?

A. Yes, sir.

Q. Do you know to whom that land belongs?

A. I do.

Q. State to whom it belongs?

A. That is the grazing land of Capitan Mateo—I do not know when he fenced it.

Q. When you first had reason was this land used by Cariño?

A. Yes, sir.

80 Q. From that time until the present has that land always been an "instancia" (grazing land) of Mateo Cariño?

A. Yes, sir; under Spain it was, but since the revolution it has been more or less abandoned as it is now.

Q. Since the revolution until now Mateo has abandoned that land?
A. Yes, sir.
Q. Upon what do you base that assertion?
A. Because since the revolution he has not repaired the fences upon that land.
Q. Before the revolution did you see many cattle upon that land?
A. Before the revolution the cattle used to graze there.
Q. And after the revolution did you continue to see many cattle on this ground?
A. During the revolution the cattle grazing on that land were taken away, I do not know where driven.
Q. When did the revolution, to which you refer, take place?
A. In my judgment, over seven years ago.

Mr. HAUSSERMANN:

Q. You have known Mateo Cariño since you were nine years old?
A. Yes, sir.
Q. When you first knew him, he was in possession of that land as the owner?
A. I only knew that land belonged to Mateo because the people told me it was the grazing land of Mateo.
Q. At that time there was a fence around the land?
A. Yes, sir.
Q. And that continued until the outbreak of the revolution?
A. Yes, sir.
81 Q. During all that time since you were nine until the outbreak of the revolution Mateo was pasturing his cattle on that land, was he?
A. In Spanish times I saw it often.
Q. When did you notice that the lands were not being used any more for pasture?
A. It is now five years.
Q. Did he not have cattle in there during the term of Governor Whitmarsh?
A. No; there were none.
Q. Are you sure there were no cattle in that land during Governor Whitmarsh's term?
A. Yes, sir; I am certain.
Q. Do you remember the outbreak of the pest that occurred in this province during Governor Whitmarsh's term?
A. Yes, sir.
Q. Many cattle died during that time?
A. Yes, sir.
Q. Did not Mateo lose many cattle during that time?
A. Yes, sir.
Q. Those cattle that died during Governor Whitmarsh's term that belonged to Mateo—were they not pastured on that land before their death?
A. No; some were pastured in Pias and others in Pacdaw.
Q. Where were you living during Governor Whitmarsh's term?

A. In the same place I am living now.
Q. Were you employed by the American Government?
A. Yes, sir.
Q. Are you now employed by the American Government?
A. Yes, sir.
82 Q. What work do you do for the American Government?
A. As overseer of the workmen and as cook for the Governor.
Q. Do you remember when that new road was built through Mateo's land?
A. Yes, sir.
Q. Before that road was built was there not a trail running through the land?
A. There are two trails on that land—a new one.
Q. Is it not a fact that in order to go on the old trail on Mateo's land it was necessary to go through a gate?
A. Yes, sir.
Q. And is it not a fact that those gates were there and it was necessary to open them to go through that land since the Americans came to Baguio?
A. Since the arrival of the Americans they were open and have not since been closed.
Q. When the Americans arrived in Baguio the gates were still on the trail?
A. They were, but have not since been closed.
Q. Who opened those gates?
A. I do not know; I only know that they were no longer closed.

Sr. PAREDES:

Q. Are you a native of Baguio?
A. No; Sablan.
Q. Does Sablan belong to the jurisdiction of Baguio?
A. Yes, sir.
Q. As a native of this province do you know the customs among these people?
A. Yes, sir.
83 Q. According to the custom here if an Igorrote dies leaving various children and considerable property, who inherits the property?
A. The custom is that if there are three children the property must be divided equally among them.
Q. If there are, for instance, three children and one piece of land, to whom does this land go according to the custom here?
A. If it is a rice field it goes to be divided among the three children.
Q. And these customs of which you speak, are they observed among the Igorrotes the same as law?
A. Yes, sir.
Q. What custom have the Igorrotes owning many cattle—do they put them in one place or do they put them in many places?
A. The custom among the Igorrotes, if there are many head, is to build an enclosed grazing field.

Q. Is it not also a custom, observed by others, to allow the cattle to run at large—to pasture in the mountains?

A. If the cattle are few they are allowed to roam and the tract is not fenced.

Q. What do you call "instancia" here?

A. It is the same in Ilocano as Igorrote.

Mr. HAUSSERMANN:

Q. Is that land down at Lubas, which Mateo claims, an instancia?

A. Yes, sir.

Testimony of E. L. Pulver, Found on Pages 78 to 82, Inclusive.

84 E. L. PULVER, residence Manila, age 45, occupation carpenter, being duly sworn, testified as follows:

Mr. HAUSSERMANN:

Q. When did you first arrive in Benguet Province?

A. February, 1900.

Q. Do you know the tract of land in question here which Mateo Cariño is attempting to have registered?

A. Yes, sir.

Q. When were you first on that land?

A. I passed through there sometime in the month of February, 1900.

Q. At that time was the new road built?

A. No, sir.

Q. Was there a trail through the land?

A. Yes, sir.

Q. In taking that trail going through the land state whether there were any gates to be opened?

A. Yes, there were.

Q. At either end of the trail?

A. Yes, sir.

Q. Did you assist in the survey of that land made for these proceedings?

A. Yes, sir.

Q. Who made the survey?

A. Mr. Davies.

Q. What were your duties in making that survey?

A. Carrying the chain.

Q. In that survey did you go around the boundaries of the land?

A. Yes, sir.

85 Q. Was there any fence around the land?

A. Yes, sir; there was a fence.

Q. What kind of fence?

A. Stone fence, sod fence and barbed wire.

Q. What part of that land, if any, did not have a fence around it?

A. I cannot say how much of it was not fenced. There was

quite a portion of one side of it where it was absolutely unnecessary to have a fence to keep cattle in.

Q. All places on the land where it was possible for cattle to stray there was a fence?

A. Not at the time we were surveying; I do not think there was a fence at all those places where this new road cuts through. I do not think it was closed at the time we made the survey, but a year previous, after the new road was built, bars were placed in the road.

Q. In all places except where the new road runs and where the land was steep it was shut in by fence?

A. Yes, sir.

JUDGE:

Q. You do not mean to state that that fence is cattle proof at the present time?

A. No, it is not.

Mr. HAUSSERMANN:

Q. Referring to the question as to why the fence was not cattle proof—do you know why the fence was not kept cattle proof?

86 A. No, sir; I do not know the reason why it is not kept up. I know at the time they put the bars in the road they were urged to take the bars out of the road.

Q. By whom?

A. I am quite positive by Governor Whitmarsh. At any rate that was the general talk—that the bars must come down because it was impossible to go over it with a team and wagon—there was some talk at that time of using the road for that purpose.

Q. Then, of course, if the Government would not permit a fence maintained at either end of the road there was no need of keeping up a fence at other points, was there?

A. I would so imagine.

Q. Did you learn from the natives, or other sources, upon your arrival here, to whom that particular tract belonged—that is, by hearsay?

A. Yes, sir; I was told that the piece of land belonged to an Igorrote here.

Q. Do you know his name?

A. I did not at that time.

Q. Have you learned since to whom they referred?

A. Yes, sir; Mateo Cariño.

Q. Did that seem to be the general understanding of the people of this vicinity—I mean the Igorrotes—that Mateo Cariño owned that land?

A. Yes, sir.

Q. Do you know any person, Igorrote or otherwise, who questioned the ownership of Mateo Cariño, other than the military authorities and the Civil Government, since you have been here?

A. I do not.

Q. Then from your best experience and observation, since be-

coming a resident of this province, the only persons who
87 questioned the ownership of Mateo Cariño to that particular tract of property was the Military and Civil Governments?

A. To the best of my knowledge.

Q. During the time you were here was any person other than Cariño in possession of that tract of land, other than the possession taken by the military and civil authorities?

A. Different persons have squatted on the ground, I believe. I understand that Mr. Reavis was there for a time and I lived there for a time and there were a couple of prospectors there also. Mateo Cariño is the only person who has been in possession of the land.

Q. So far as you know, as soon as those persons squatted there learned of the true situation they left the land?

A. Yes, sir.

Q. This possession that has been taken of a part of the land by the military authorities and another part of the civil authorities, was taken after you arrived in this province?

A. Yes, sir.

Q. When you first knew this land Mateo Cariño was in the open, exclusive and notorious possession of that land so far as you know?

A. Yes, sir.

Q. It was so understood and recognized by the Igorrote natives in this neighborhood?

A. That is my idea of it.

Mr. PAREDES:

Q. What possession is that to which you refer as having been taken by the military and civil authorities?

A. I have understood they were taking it as a military reservation.

88 Q. When they were making this reservation do you know whether Mateo Cariño made any objection or any complaint against it?

A. I do not know what Mateo Cariño did in the matter.

Q. You stated that you assisted in the survey of this property by the engineer. Can you state how far the property is from the town of Baguio in a direct line?

A. Between a mile and a quarter and a mile and a half.

Q. How many kilometers would that equal?

A. I do not know.

Q. Do you know the house where Mateo Cariño lives in Baguio?

A. I do.

Q. From the land in question to this house would there be a distance of the mile and a half you mentioned?

A. About that.

Testimony of Mr. C. L. Simson, Found on Pages 83 to 84.

Mr. C. L. SIMSON, resident of Manila, age 45, occupation confectioner, being duly sworn testified as follows:

Mr. HAUSSERMANN:

Q. Did you assist in the survey of this tract of land which Mateo Cariño claims and is now attempting to register—the survey which was made by Mr. Davies?
A. I did.
Q. What part did you take in the work?
A. I carried the rear pole.
Q. In that survey did you go around the boundary of the land?
A. Yes, sir.
Q. Was there an enclosure around the land when you surveyed it?
A. There was.
89 Q. What kind of fence?
A. Stone, sod and barbed wire.
Q. What parts of the tract, if any, did not have a fence around it when you made the survey?
A. There were several places which did not have any fence.
Q. How about the new road which crosses it?
A. There was no fence at all there.
Q. According to your best judgment, Mr. Simson, what proportion of the boundary of that land did not have an artificial fence there?
A. Probably one-tenth of the whole circumference.
Q. And was there any part of that land there, other than the new road, that passed through the land, that did not have an artificial fence at that time, except the bluff?
A. I think not. There was part of the barbed wire fence down—the distance between two posts.
Q. That part which you called a bluff—where there was no artificial fence—was that bluff sufficiently high to prevent cattle from going out at that point.
A. I should think so.

Mr. PAREDES:

Q. When did you help in the survey of this land?
A. The latter part of last April or in May.
Q. Do you know the house where Mateo Cariño lives in Baguio?
A. I do.
Q. How far is this land from that house?
A. I am a poor judge at distances but I should say from a mile to a mile and a half.
Q. Did you see any cattle on the land?
A. I do not think I did.
90 Q. How many days were you making that survey?
A. Three or four days.

Mr, Haussermann here stated that he had four other witnesses—

Igorrotes—who would testify that they have understood for many years that this land belonged to Mateo; that he had a fence around it and had cattle there. He inquired whether the representative of the Government would, in order to save time, concede that they would so testify. Understanding as follows was had between the parties; It was conceded by the representative of the Attorney General that four Igorrotes—witnesses present on behalf of the applicant—would, if presented, testify that Mateo Cariño had been in possession of the land in question since the death of his father until the revolution against Spain.

Testimony of Mr. M. A. Clarke, Found on Page- 84 *to* 89, *Inclusive.*

Mr. M. A. CLARKE, 35 years of age, occupation confectioner, residence Manila, being duly sworn testified as follows:

Mr. HAUSSERMANN:

Q. When did you first arrive in Baguio province?

A. In June 1900.

Q. When did you first become acquainted with the land claimed by Mateo Cariño, which he now seeks to have registered in this Court?

A. I passed through it in June, 1900.

Q. For what purpose did you come to Benguet province at that time?

91 A. I had sent some prospectors up here about February of the same year and they had reported favorably on some prospects and I came up to see them. They had also reported that there was a fine climate here and some fine land, etc.

Q. Did you make any inquiries at the time you first arrived here and first saw this land, as to who was the owner?

A. Yes, sir; I inquired who owned that land. It was pointed out as a very nice piece of land. They said it was owned by some native. I instructed my men who stayed here to look it up and see who owned it.

Q. When did you learn that Mateo Cariño owned the land?

A. On the next visit the party in question made to Manila, some months afterward in 1900.

Q. When you first saw or noticed the land in June, 1900, did you notice whether or not it was enclosed?

A. Yes, sir; there was a fence—I do not know if it was all around it at that time but there was a gate and bars we had to pass through in going toward Loachan?

Q. Were there many cattle on the land at that time?

A. Yes, sir; cows and horses.

Q. Was any part of the land under cultivation?

A. I did not look it up at all; I do not know.

Q. At that time—June 1900—was the new road in there?

A. No, sir.

Q. Who was Governor of the Province at that time?

A. Nobody.

Q. Was there any American form of Government here at that time?

A. There was some colored troops of the 48th Inf. at Trinidad.

Q. In the immediate vicinity of Baguio there were no troops?

A. No, sir.

92 Q. No form of American Government?

A. No, sir.

Q. When did you first meet Mateo Cariño?

A. I never met him until I went to buy his land from him.

Q. When was that?

A. That was in 1902.

Q. Are you sure it was 1902?

A. I cannot state positively now, just what time it was.

Q. Did you see Mateo or have any talk or conversation with him respecting this land before making the agreement for purchase?

A. No, sir; I did not know him and do not know as I had ever seen him until I talked with him about the purchase of the land.

Q. Who acted as your interpreter in the conversation between yourself and Mateo?

A. I think he was Secretary, at the time, for the Governor.

Q. How long did it take you to secure his agreement to the sale?

A. About six hours, I think,

Q. Was there an agreement in writing drawn up at that time?

A. Immediately after our conversation and a decision what we would do, the papers were drawn up at once.

Q. By whom?

A. By Mr. Sobral, a notary here. I want to say the reason I did not meet Cariño before that was because I didn't want him to know I was after his land at all; I got my information and when I was ready I went to see him. Usually if they know an American is after their land they ask a price which is unreasonable. When I went to him I settled the business before I left.

Q. How did you learn that Mateo Cariño was the owner of the land?

A. Through Mr. Pulver—he found out for me.

93 Q. I invite your attention to that part of Mr. Pack's letter to the Clerk of this court, in which he says, "Now, at this time comes a certain Mr. Clarke, who, taking advantage of the native custom of allot-ing lands to different chiefs, has this Igorrote make a claim of possession to this property, which, because the military desire it, has become suddenly, in his mind, valuable." State whether or not you did advise him in any way, or suggest to Mateo Cariño to have his land registered or to make a claim of possession?

A. I never had spoken to Mateo Cariño, nor had I ever sent any one to him to influence him in any way to get a title to the land.

Q. Did you, or any person for you, *had* anything to do or in any way suggest or advise Mateo Cariño to commence proceedings in San Fernando to secure a possessory information title to this land?

A. No, sir.

Q. So far as you know, Mateo Cariño took steps to have his

possessory title obtained before he knew there was such a person as you?

A. I do not think he knew me. I would like to add that when I found out that the land was owned by an Igorrote there had been a Mr. McDonald and others who had tried to claim or homested the property. In view of the fact that there was a fence around it and it was stocked, I told Pulver that it was useless to go into this man's land and try to homestead it, and I then learned that he did not have any papers or title deeds, and so I waited and at the time he took these out I was down in Singapore and when I got back to Manila I was informed that he had received his possessory information and I came up to Baguio immediately.

94 Q. During all that time had you had any conversation with Mateo concerning the purchase of this land?

A. I had never met him or any member of his family, and I did not know that the military had any idea of establishing a reservation there when I started in on this deal.

Q. Is it not a fact that after you made up your mind to purchase this land, and subsequently learned that the military were going to reserve a part of it for a reservation, that you did your *be* best to try to persuade the military not to take part of that land for a reservation?

A. I put a man on the land after I concluded these arrangements with Cariño, and the military authorities ordered him off—the Lieutenant in charge here—so I told him to remain until they gave him written notice to vacate, which he did.

Q. Under your contract of sale or option did Mateo agree to give you possession at once?

A. Yes, sir; I also gave him permission to keep cattle on it, but the road had been cut through and he could not. He also asked me to stop the people cutting wood, but I could not.

Q. Has the value of that land enhanced very materially since you entered into that agreement with Cariño?

A. Yes, sir.

Q. Has the value enhanced since the filing of these papers?

A. It has been increasing all the time as the work on the road and the prospective improvements intended here by the Civil Government were made public. The land all over this place has enhanced in value.

Q. Do you know what the value of land is in this immediate vicinity, and also in the vicinity of this tract of land?

A. I have just heard the value. I had nothing to sell but I have heard that it was worth $100 an acre, gold.

95 Q. Do you consider $100 gold per acre a fair and reasonable value of the land in question here at this time?

A. All of that land may not be worth that exactly—some of it may be worth more, that is, on the Government road. The fact that that Government road passes through this land makes the land on either side, perhaps, more valuable than that, while other spots may not be that valuable.

Q. Would it average a value of $100.

A. I think so. I bought some $100 worth of fruit trees which I expected to plant on some part of the place, which did not arrive in very good condition, but it was my intention to improve the place and experiment with the fruits. My idea in doing that was to improve it, and, of course, sell parts of it.

Q. Your contract is on file in the records of the province?

A. Yes, sir.

Testimony of Mateo Cariño, being Recalled, Found on Page 89 to 91, Inclusive.

MATEO CARIÑO, being recalled to the witness stand, testified as follows:

Mr. HAUSSERMANN:

Q. During the Spanish times is it not a fact that the Spanish officers who were in charge of this province, knew that you were the owner of this particular land all that time, and recognized you as the owner?

A. Yes, sir; they recognized me as the owner because I had my cattle there.

96 Mr. PAREDES:

Q. Who were those officials of the Spanish Government who recognized you as the owner of that land?

A. Commandante Billena.

Q. Was he commander of this district then?

A. Yes, sir.

Mr. HAUSSERMANN:

Q. Did any other Spanish officials before or after Comandante Billena recognize you as the owner of this land?

A. Señor Billena asked me if this land was my property. I answered him in the affirmative. There were then two gates.

Q. Did you know, or did any of the Spanish officials inform you of the Royal Decree of Maria Cristina, issued February 13, 1894, concerning the manner in which the inhabitants of these Islands could obtain a paper title to their lands?

A. Yes, sir; I was informed of that Royal Decree.

Q. Why did you not obtain a title under that Royal Decree?

A. The officials here informed me that that was not compulsory; that it could be requested or not; that it was all the same.

Q. You were informed, by that officer, that if you did not take out paper title within one year that the Government would take the land away from you?

A. No, sir.

Q. Did you believe the Spanish officials who were in charge of this district, that it was not necessary for you to take out papers—did you rely upon that?

A. I believed them because they said if it is my property nobody would take it away.

possessory title obtained before he knew there was such a person as you?

A. I do not think he knew me. I would like to add that when I found out that the land was owned by an Igorrote there had been a Mr. McDonald and others who had tried to claim or homested the property. In view of the fact that there was a fence around it and it was stocked, I told Pulver that it was useless to go into this man's land and try to homestead it, and I then learned that he did not have any papers or title deeds, and so I waited and at the time he took these out I was down in Singapore and when I got back to Manila I was informed that he had received his possessory information and I came up to Baguio immediately.

94 Q. During all that time had you had any conversation with Mateo concerning the purchase of this land?

A. I had never met him or any member of his family, and I did not know that the military had any idea of establishing a reservation there when I started in on this deal.

Q. Is it not a fact that after you made up your mind to purchase this land, and subsequently learned that the military were going to reserve a part of it for a reservation, that you did your *be* best to try to persuade the military not to take part of that land for a reservation?

A. I put a man on the land after I concluded these arrangements with Cariño, and the military authorities ordered him off—the Lieutenant in charge here—so I told him to remain until they gave him written notice to vacate, which he did.

Q. Under your contract of sale or option did Mateo agree to give you possession at once?

A. Yes, sir; I also gave him permission to keep cattle on it, but the road had been cut through and he could not. He also asked me to stop the people cutting wood, but I could not.

Q. Has the value of that land enhanced very materially since you entered into that agreement with Cariño?

A. Yes, sir.

Q. Has the value enhanced since the filing of these papers?

A. It has been increasing all the time as the work on the road and the prospective improvements intended here by the Civil Government were made public. The land all over this place has enhanced in value.

Q. Do you know what the value of land is in this immediate vicinity, and also in the vicinity of this tract of land?

A. I have just heard the value. I had nothing to sell but I have heard that it was worth $100 an acre, gold.

95 Q. Do you consider $100 gold per acre a fair and reasonable value of the land in question here at this time?

A. All of that land may not be worth that exactly—some of it may be worth more, that is, on the Government road. The fact that that Government road passes through this land makes the land on either side, perhaps, more valuable than that, while other spots may not be that valuable.

Q. Would it average a value of $100.

A. I think so. I bought some $100 worth of fruit trees which I expected to plant on some part of the place, which did not arrive in very good condition, but it was my intention to improve the place and experiment with the fruits. My idea in doing that was to improve it, and, of course, sell parts of it.

Q. Your contract is on file in the records of the province?

A. Yes, sir.

Testimony of Mateo Cariño, being Recalled, Found on Page 89 to 91, Inclusive.

MATEO CARIÑO, being recalled to the witness stand, testified as follows:

Mr. HAUSSERMANN:

Q. During the Spanish times is it not a fact that the Spanish officers who were in charge of this province, knew that you were the owner of this particular land all that time, and recognized you as the owner?

A. Yes, sir; they recognized me as the owner because I had my cattle there.

96 Mr. PAREDES:

Q. Who were those officials of the Spanish Government who recognized you as the owner of that land?

A. Commandante Billena.

Q. Was he commander of this district then?

A. Yes, sir.

Mr. HAUSSERMANN:

Q. Did any other Spanish officials before or after Comandante Billena recognize you as the owner of this land?

A. Señor Billena asked me if this land was my property. I answered him in the affirmative. There were then two gates.

Q. Did you know, or did any of the Spanish officials inform you of the Royal Decree of Maria Cristina, issued February 13, 1894, concerning the manner in which the inhabitants of these Islands could obtain a paper title to their lands?

A. Yes, sir; I was informed of that Royal Decree.

Q. Why did you not obtain a title under that Royal Decree?

A. The officials here informed me that that was not compulsory; that it could be requested or not; that it was all the same.

Q. You were informed, by that officer, that if you did not take out paper title within one year that the Government would take the land away from you?

A. No, sir.

Q. Did you believe the Spanish officials who were in charge of this district, that it was not necessary for you to take out papers—did you rely upon that?

A. I believed them because they said if it is my property nobody would take it away.

97 Q. Do you remember when you learned of that Royal Decree of February 1894?

A. No; I do not remember when it was. The last Comandante, Señor Bejar, informed us that we would have to get a paper title and we gave him money.

Q. And did you pay money to the Spanish officials to secure documents?

A. Yes; to the last Comandante.

Q. And did you get your paper title that you paid for?

A. No, sir.

Q. Why not?

A. I do not know—because they went away.

Mr. PAREDES:

Q. That last commander—did he leave the province — account — revolution of Filipinos against Spain?

A. Yes, sir.

JUDGE: What were the names of the officials who told you there was no necessity to secure a paper title under the Decree of February 1894?

A. Emigdio Octaviano.

Q. What position did he hold in the Government here?

A. Clerk or escribiente.

Q. Is he not the same person who is now Provincial Secretary?

A. Yes, sir.

Q. What is he—Spanish or Filipino?

A. He is a Ilocano.

Mr. Haussermann states that he has no more testimony to offer, but wished to reserve the right to introduce any papers which he might find in Manila that would throw any light upon
98 the facts developed during the trial, and that he also wished to present the testimony of Juan Cariño, a brother of the applicant, whom he had not been able to reach, but who they were assured would come to Manila to testify.

Mr. Paredes advises that he has no further evidence to offer unless the testimony of Juan Cariño in Manila would develop new facts not yet touched upon at the hearing.

UNITED STATES OF AMERICA, *Philippine Islands:*

Court of Land Registration of the Philippine Islands.

In the Matter of Expediente No. 87. MATEO CARIÑO, Applicant.

Testimony.

The Court convened at Manila, P. I., at 3:15 P. M., on February 8, 1904, Associate Judge D. R. Williams, presiding, John W. Haussermann representing applicant, Isidro Paredes representing the Insular Government, and Lieut. J. H. Poole representing the Commanding General of the Philippine Division.

JUAN CARIÑO, fifty years of age, married, being first duly sworn, testified as follows:

99 Mr. HAUSSERMANN:

Q. Where do you live?
A. Tublay, Benguet.
Q. How long have you lived in Benguet Province?
A. I was born in Tublay.
Q. Do you know Mateo Cariño?
A. I know him.
Q. He is your brother?
A. He is my brother.
Q. What was the name of your father?
A. Pablo Cariño.
Q. What was the name of your grandfather?
A. Waule.
Q. Did your grandfather die before or after your birth?
A. He died before I was born.
Q. Do you know the land in Lubas which is claimed by Mateo Cariño and which he is now attempting to register?
A. I know it.
Q. Is that Mateo's land?
A. That is the land that was adjudicated to Mateo.
Q. From whom did Mateo receive that land?
A. From our father, Pablo Cariño.
Q. Did your grandfather own that land before your father?
A. Yes.
Q. Did that land have a fence around it?
A. Yes; it is fenced around.
Q. Was that fence around there during your father's life?
A. Since our grandfather.
Q. What was that land used for by your father, by Mateo and by your grandfather before you?

A. That land was used for planting camotes, palay and
100 for grazing stock.

Q. Did your father live on that land during his life time?
A. There our grandfather died—there were erected two houses.
Q. Who was living on the land while your father was living?
A. Our father himself was living on that land and taking care of it. At his death it passed to Mateo who inherited it.
Q. How was it passed to Mateo? What formality was gone through with when the land was given to Mateo?
A. The custom of the Igorrotes is to deliver the property verbally without any formality. There were also summoned two witnesses.
Q. Was this land delivered to Mateo in the presence of witnesses?
A. There should be witnesses at the time of delivery.
Q. Was this land delivered to Mateo in accordance with the custom of the Igorrotes at that time?
A. Yes; that land was delivered in the presence of Witnesses, and also in dedication cows and hogs were killed.
Q. How old is Mateo?

A. About 46 or 49 years old.
Q. Do you know how old you were when your father died?
A. What I know is that my father died about 31 years ago.
Q. Do you know how old your father was when he died?
A. I do not know.
Q. Was your father married when his father died?
A. Yes, sir.
Q. Was Mateo married when your father died?
A. Yes, sir; he was married.
Q. How many children did your father have before your grandfather died?
A. I think he had no children yet when our grandfather died.
101 Q. Has Mateo been in possession of that land from the time of the death of your father until now?
A. Yes, sir.
Q. And was, during all that time, said land used for grazing purposes and for cultivation purposes?
A. Yes, sir; up to this time.
Q. Do you know Mateo's father-in-law?
A. Yes, sir.
Q. Was he ever in charge of that land at Lubas?
A. He helped Mateo in taking care of that land.
Q. Do you own any land in Benguet Province?
A. Yes, sir; I have lands in Benguet also.
Q. How, during Spanish times, were the Igorrotes made acquainted with the laws of Spain in force in these Islands?
A. They called the headman of the Igorrotes, the Capitan, and told him and he told the people.
Q. Were those laws printed in the language of the Igorrotes or did the Capitan tell them to you by word of mouth?
A. There was also interpreter who interpreted it into Ilocano dialect.
Q. Were these laws told to you by word of mouth or by writing?
A. Sometimes the Capitan was called, but other times the order was sent to the Capitan and he made it known to the people verbally.
Q. Did you receive notice of the Royal Decree of 1894, concerning the manner in which the occupants of these lands could obtain a paper title to the lands that were held by them?
A. Yes, sir.
Q. Did you receive this notice in writing or by word of mouth?
102 A. I knew it through the Capitan of our town.
Q. Were you or the Igorrotes informed that if you failed to register your lands within one year after 1894, that those lands were to revert back to the King of Spain?
A. We were notified of it and in consequence many filed applications.
Q. Did you file any application?
A. Yes, sir; we were many who filed applications.
Q. Did you apply?

A. Yes, sir.

Q. Did you obtain the paper title during the Spanish times?

A. We were waiting for it but we received nothing.

Q. How many times did you apply to the Spanish officials for a paper title?

A. I applied twice; I do not know how many times the others did.

Q. Was it generally known among the Igorrotes that you and others, after applying several times for your paper titles, failed to obtain them?

A. There were many also who filed applications without obtaining anything.

Q. Do you know whether Mateo applied during the Spanish times for a paper title to this ground in Lubas?

A. Yes, sir; he filed an application.

Q. Did he file application in the time required by law?

A. After they filed the application it was stated to us not to fear anything because these lands could not be taken by other persons.

Q. Who told you that—not to be afraid?

A. The interpreter—because we could not understand what the Spaniard said.

Q. Did the interpreter purport to interpret to you what the Spaniard said?

103 A. Yes, sir; the same as we are doing this moment—you are speaking and the other gentleman is translating.

Q. Did Mateo get his paper title?

A. No; he did not obtain title but he spent lots of money in filing applications.

Q. Was it generally recognized among the Igorrotes, during Spanish times, that the lands at Lubas belonged to Mateo?

A. Yes; it was made known in the town; all the people of the town knew that that land belonged to Mateo.

Q. Did the Spanish officials during Spanish times recognize that land as belonging to Mateo?

A. Yes, sir; every comandante knew that that land belonged to Mateo Cariño, because in those times we applied for a title to those lands which we could not obtain.

Cross-examination by Senor PAREDES:

Q. Who drafted for you the application to obtain a written title?

A. The clerk of the comandante.

Q. State tha name of that clerk?

A. Jose Madaran, now deceased.

Q. How many applications of that kind did Jose Madaran draft for you?

A. Two; I do not know how many he drafted for others.

Q. Do you know who drafted the application of Mateo Cariño to obtain title for the land in Lubas?

A. I do not know.

Q. Did Mateo Cariño file his application the same time as you did or before or after?

A. At first we filed our applications together. When I filed my second application I was alone.

104 Q. With whom did you file your application?

A. Comandante Martinez.

Q. In what year did you file your application with Comandante Martinez?

A. I do not know the year.

Q. Did Mateo Cariño file his application before the same Comandante ?

A. Yes, sir; at first we filed our applications with Comandante Martinez.

Q. With whom did you file your second application?

A. With Comandante Bejar.

Q. In what year?

A. Near the insurrection.

Q. Two years before the insurrection?

A. A year before the rebellion.

Q. Do you remember who the Filipino employés in the Province of Benguet were at the time you filed your application?

A. When I filed my second application I saw there Emidio Octaviano and Toribio Valdez.

Q. Did you know then an employé of that government a certain Alejandro Cauli?

A. I did not know him.

Q. Do you remember of Marcos Madaran was an employé of that office?

A. Yes; I know him.

Q. Was he employed in that office when you filed your application?

A. I do not know because sometimes I saw Marcos Madaran there and others not.

Q. For how many parcels of land did your brother Mateo Cariño file application?

105 A. Those that I know are Duyo, Lubas and the one where his house is erected.

Q. Then he filed three applications?

A. Yes, sir.

Q. Did he obtain any of the titles applied for?

A. No, sir.

Q. Do you know if Mateo Cariño applied for possessory proceedings for the land in Lubas?

A. He didn't tell me anything about applying for possessory proceedings.

Q. None of those who applied for written title from the Government obtained such title in Spanish times?

A. None.

Q. Why did you file two applications?

A. Because those orders were published twice.

Q. You have stated that Mateo Cariño spent a great deal of money to obtain a written title to his land—is it not so?

A. I suppose he spent money although I have not asked him—because they were constantly asking for money from Mateo.

Q. Who was asking for money from Mateo Cariño?
A. The clerk asked for the money by order of the Comandante, and placed the money on the Comandante's desk.
Q. You saw Mateo Cariño give money to the Clerk?
A. I did not see it but I suppose he gave money the same as others.
Q. You stated before that Mateo Cariño filed his application for written title within the time required by law. State now what term that was?
A. I do not remember the date, but once that order was published we filed our applications immediately.
Q. Were you present when the Lubas land was delivered to Mateo?
A. Yes, sir; we were present when our father delivered
106 that land to Mateo.
Q. Why do you know that Mateo Cariño has been in possession of the land in question since your father's death up to this time?
A. I know it because our father delivered that property to Mateo.
Q. You know it for that reason only.
A. Yes, sir.
Q. Was not the father-in-law of Mateo Cariño the owner of the Lubas land?
A. Our grandfather was the owner of that land.
Q. Was not that land in the hands of the father-in-law of Mateo?
A. The father-in-law of Mateo helped him to take care of that land.
Q. Do you know the new road built through the land in question?
A. Yes, I know it.
Q. When was that road opened?
A. In Spanish times that road was narrow and small; since the Americans came that road was widened.
Q. Then the new road was built on the trail by widening it?
A. Yes, sir; during the American Government this road was made wider.
Q. What property was adjudicated to you on account of your father's death?
A. According to our custom, we divided lands and cattle.
Q. When did you make the division?
A. Before our father's death.
Q. Do you know the house where Mateo Cariño lives in Baguio?
A. I do.
Q. How far is that house from the land in question—in a straight line?
107 A. According to my calculation it is more than two and less than three kilometers.
Q. Has Mateo Cariño ever lived on the land in question?
A. No; he only planted camotes, palay, and used it for grazing purposes.

Q. And the father-in-law of Mateo Cariño did he live on that land?

A. No, sir.

Q. How much money did you spend in applying to obtain title for your land?

A. When I first filed my application I spent twenty pesos I delivered to Comandante Martinez, and the other twenty-four pesos to Comandante Bejar.

Q. Who was present when you deliver these amounts?

A. Toribio Valdez and Miguel Picar.

Lieut. Poole requests that the contract regarding Mr. Clarke's option to purchase the land in question, which was read in part during the hearing in Baguio, be introduced in full in the record. All parties agreed. Mr. Haussermann requested that the record show that said contract is introduced as evidence on the part of the military authorities.

Mr. Haussermann stated that he had not been able to discover any documents in Manila referring to the land in controversy, and wished to reserve the right to present any such documents he should discover before decree was entered. The court stated that should any such documents be found they would be admitted after first being submitted to the representative of the Attorney General and receiving his approval.

Señor Paredes requested a continuance of the case until such time as the Court adjourned to Baguio, in order to introduce evi-
dence in rebuttal of the testimony given by the last two wit-
108 nesses—Mateo and Juan Cariño. The Court held that Juan Cariño offered no testimony different in character from that offered by the witnesses in Baguio, at which time no statement was made by Señor Pardes intimating that he wished to rebut the testimony last offered by Mateo Cariño, or the testimony to be presented by Juan Cariño, except the latter be along new lines. Had such intimation been made in Baguio the testimony could have been taken before adjournment from Baguio to Manila. The petition for a continuance of the case was, therefore, denied by the Court, and the case declared closed, to which ruling exception was taken by Señor Paredes.

The parties expressed a desire to present their arguments in the case in writing. The applicant was given five days, counting from time the reporter's notes were transcribed and delivered to him, to present his argument; and the representative of the Civil and Mili-
tary Governments five days thereafter in which to reply.

109 The foregoing testimony and proceedings before the Court of Land Registration having been admitted, the trial of the case before the Court of First Instance of the Province of Benguet proceeded as follows:

Bernardo de la Pena and Igorrote Emilio were duly sworn by the Court as Interpreters.

MATEO CARIÑO being duly sworn, testified as follows, in behalf of the Applicant.

Q. Do you remember the Royal Order of February 13th, 1894, relating to the registration of land and obtaining of written titles thereto, in this Province?

A. Yes.

Q. State whether or not you made application after that Order was promulgated in this Province, for written title to your property, which you are now attempting to have registered under and in pursuance of Act 496.

110 A. In the time of Martinez as Spanish Governor of the Province of Benguet, the Order relating to the registration of land was published in this Province, but at that time I could not make my application. Under the Spanish Government I did not make my application for title of registration; no application was made.

Q. Did you apply to the Comandante Martinez for a paper title to your land?

A. Yes; I presented the application for a title to my land.

Q. To what Governor?

A. Sigñor Governor Martinez.

Q. State whether or not you obtained the paper title which you applied for.

A. No; I could not obtain it.

Q. Did you apply to any other Governor besides Martinez for your title after that?

A. Yes; I presented again my application before Sigñor Antonio Bejar.

Q. Did you obtain the title from Bejar?

A. No; because a short time after I presented my application, the revolutionary period commenced.

Q. When you made your application to Martinez, did you present all your witnesses to Martinez?

A. Yes; when I presented my application, there were very many people present there.

Q. Were people present there to testify about you being the owner of that property?

Mr. BASSETT: I object to the question as leading.

COURT: The objection to that question is sustained, and failing to elicit an answer from this witness, he being an Igorrote, a leading question to a certain extent will be permitted.

111 By the COURT:

Q. What were those people present there for?

A. Yes; these people were there at the same time for the purpose of presenting their application.

Q. Who, if any one, went with you at that time to Governor Martinez to tell Governor Martinez about your claim to the land that you were asking for?

A. Piraso, Pukay, Bitodio, Capitan Colas went with me to testify as witnesses that I owned land.

Q. Do you remember whether your brother, Juan Cariño, went with you or not?

A. Yes; Juan Cariño went with me, because I happened to meet him at the trail leading from Tublay to Trinidad.

Q. Do you know why you did not obtain that paper title?

A. Yes.

Q. Why?

A. No; because Governor Martinez, at the same time that we presented the petition to him told us that it was not necessary for us to have any document, because the land- belonged to us, and no one could usurp them or take them from us.

Q. Why did you apply after that to Comandante Bejar?

A. Because Antonio Bejar wanted to enforce that law and he told us to present our applications for a document for our land.

Q. State whether or not you paid any money to Bejar when you made that application to Bejar?

A. Yes; I paid him forty pesos.

Q. Did you pay any money to Martinez?

A. No.

Cross-examination.

Mr. BASSETT:

Q. What was the other name of the Comandante Martinez; what was his first name?

112

A. José Martinez.

Q. Who was the Comandante who followed him?

A. Comandante Lanza.

Q. You stated that at the time the Royal Order was published, you did not have an opportunity to make an application; why did you not have an opportunity to make an application for the adjustment of your land?

A. I stated that I presented my application to Comandante Martinez.

Q. How long had Martinez been Comandante of this Province when you first presented your application?

A. I am not able to fix the time because I do not know how to reckon.

Q. Was your application in writing?

A. In handwriting.

Q. Who wrote it?

A. Ambion, Secretary of Baguio.

Q. What did your application contain?

A. The application contained the following—"The owner of the land comes to you."

Mr. BASSETT: Now, your Honor, I would like to make a motion to strike out all testimony given by Mateo Cariño in his examination in chief, on the ground that it has not been shown that this application is not in existence and for that reason secondary evidence cannot be introduced.

COURT: Motion to strike out is overruled.

Mr. BASSETT: Exception.

Q. Can you read and write?

A. No.

113 Q. How do you know that the document you presented to Governor Martinez was an application for the adjustment of your land as you testified?

A. I knew the contents of the paper by means of the Secretary's interpretation to me.

Q. Did you personally present the paper to Governor Martinez with your own hand?

A. Yes.

Q. That was the first application that you presented?

A. Yes.

Q. Did you pay Governor Martinez a fee?

A. No.

Q. You testified that Jose Cariño was with you at the time you presented your petition did you not?

A. Yes.

Q. Did Juan pay Governor Martinez a fee?

A. Yes; Juan paid the fee to Governor Martinez.

Q. Why did you not pay a fee if Juan did?

A. The Governor said to us, "The people who are living here in Baguio, will pay at the last."

Q. Where were you living at the time?

A. In the house situated where Mr. Whitmarsh's store is now.

Q. That house was not upon the land which you are attempting to register, was it?

A. The old house was not upon the land which I decided to register.

Q. Where was Juan Cariño living at that time?

A. In Tublay.

Q. Who was living on the land that you are now attempting to register at the time you made your application to Comandante Martinez?

114 A. The house of Bangley and some part was planted with camotes and pasture for cows and horses.

Q. Who was living in the house at that time?

A. Bangley was living there.

Q. Who is Bangley?

A. Grandfather.

Q. Your grandfather?

A. Yes.

Q. Who was living in the house at the time that Martinez was Comandante?

A. At the time of Martinez that house was rotten and empty.

Q. Who was the last person who lived in the house of your grandfather?

A. I do not know who lived in that house besides my grandfather.

Q. Did your father ever live in that house?

A. I do not know if my father lived there because he only has shown me the house where my grandfather used to live.

Q. In what house do you remember that your father lived?
A. My father lived in Tublay after his marriage.
Q. Where were you born?
A. Tublay.
Q. Where was your father born?
A. My father was born in Trinidad because he has two houses; one in Trinidad and in Lubas.
Q. Who had two houses?
A. Bangley, my grandfather.
Q. How many hectares are contained in the land which you are now trying to register?
A. I do not remember now—at the time and for a short time after my land was surveyed, I knew, but I do not now remember.
115 Q. When and by whom was your land first surveyed?
A. In the time of the Americans.
Q. Who was Governor at the time it was measured first, in the time of the Americans?
A. Sigñor Whitmarsh.
Q. Who measured the land at that time?
A. Sigñor Razon.
Q. Did Mr. Clarke employ him to measure the land?
A. No.
Q. Who did employ him to measure the land?
A. I myself, employed him.
Q. Why did you have your land surveyed at this time by Sigñor Razon?
A. Because Mr. Whitmarsh ordered that all the private lands in the province be measured.
Q. When was the next time your land was surveyed?
A. It was surveyed again at the time of Governor Pack.
Q. Who surveyed it in Governor Pack's time?
A. It was an American whose name I do not know.
Q. Did Mr. Clark have your land surveyed by an American?
A. Yes.
Q. Who pointed out the boundaries of your land to Surveyor Razon?
A. I, myself.
Q. Who pointed out the boundaries of your land to the American employed by Mr. Clark?
A. I, myself.
Q. Did you indicate, or did you point out the same boundaries to Sigñor Razon and to the American employed by Mr. Clark?
A. Yes; the same, because we followed the fence.
116 Q. This land is fenced then, is it?
A. Yes, this land is fenced.
Q. How is it fenced—by what kind of fence?
A. A fence of earth with some wood and stone.
Q. Do these fences extend all the way around the land that you are now claiming?
A. Yes.
Q. By whom were these fences built?

A. By Bangley.

Q. Your grandfather Bangley then was the first person who built the earth fences around this land?

A. Yes.

Q. Are there earth fences on this land other than that fence which goes around the boundary?

A. No other fence but the fence around the land.

Q. Have there been other fences since you can remember than the fence which goes around the land?

A. No.

Q. Are you sure that an earth fence exists all the way around your land?

A. The fence around the land; they are not all earth but some parts are stone and some part wood, and this wood is already rotten.

Q. Now, I want to know at what places on the land the fences are earth.

A. The eastern part is where the earth fence is.

Q. Do you know where the Ipit river is?

A. I know.

Q. Is there an earth fence running along by the side of the Ipit river ?

117 A. There is earth fence by the river and there is also stone fence by the river.

Q. What do you consider your boundary—the river or the earth and stone fences which run beside the Ipit river?

A. The fence runs out rightangles to the river—along the river there is no fence.

Q. Where there is no fence along the river—you consider the river your boundary, do you?

A. Yes, I consider the river as boundary.

Q. How many fathoms long is the earth fence which runs at right-angles to the river?

A. I do not know how many fathoms, but it is a long distance.

Q. Can you tell by pointing out objects?

A. About equal to the distance from the Chinaman's over to the stable of the quartel of the Philippine constabulary.

Q. Is the earth fence that you refer to as being at right angles with the river, the fence that runs along beside the army post, where the army stables are on the military reservation?

A. That is the fence to which I refer.

Q. Do you know where the Lubas river is?

A. Yes, I know.

Q. Do you consider that the Lubas river is your boundary from the road to the earth fence at the top of the hill?

A. No, because there is a fence.

Q. How long is the fence that goes up the hill from the road?

A. A long distance.

Q. I mean the fence that leaves the road near the mill and goes up toward the military reservation?

A. There is fence there, but it is short.

Q. Now, from the end of that fence, that short fence, to the

point where the next earth fence begins, what do you con-
118 sider the boundary of your land?

A. I consider the bank of the river as boundary.

Q. The bank of the Lubas river?

A. Yes, the Lubas river.

Q. There is an earth fence which goes at right angles to the Lubas river or up toward the hill to the buildings on the military reservation, is there not?

A. There is no fence.

Q. How many earth fences are between your land and the land of Piraso?

A. Two earth fences.

Q. What do you consider the boundary of your land between the end of those two earth fences; from one earth fence to another?

A. The river.

Q. Lubas river?

A. Yes; because the fence goes to the river.

Q. Do you know where the district of Lauacan is?

A. Yes.

Q. Is there an earth fence or a stone fence or a wood fence between your land and Lauacan?

A. There is a stone fence.

Q. How long is the stone fence between your land and Lauacan?

A. The distance equal from here to my house.

Q. Is that fence a natural fence or one which has been constructed by some one?

A. That fence was made by grandfather.

Q. Is there an earth fence between your land and Lauacan other than a stone fence?

A. Yes; there is also an earth fence.

Q. How long is the earth fence?

A. Same distance as from here to the hotel.

119 Q. Was the earth fence also constructed by your grandfather?

A. Yes.

Q. Are the five fences that you have mentioned on the side of the road where the military reservation is, the only earth and stone fences which have been constructed by men?

A. They are the only fences.

Q. Do you know where the mill is that belongs to Mr. Wagner?

A. Yes; I know.

Q. Is that mill situated upon the land claimed by you?

A. The mill is on the boundary line.

Q. The river is the boundary at the point where the mill is?

A. Yes.

Q. Then, if the mill is situated in the side of the river opposite from your land, it is not on your land?

A. It is not.

Q. Who constructed the earth fence that is on the opposite side of the mill on your land?

A. Mangos.

Q. Is Mangos a relative of yours?
A. No.
Q. Is there a fence—an earth fence between the road and the mill which bounds your land?
A. Yes; there is a fence.
Q. Who built that fence?
A. Mangos.
Q. What is the name of the river on which the mill is situated?
A. Lubas.
Q. Is there a fence between your land and the land of Pias near the mill?
A. Yes.
120 Q. How long is that fence?
A. Just like the distance from here to my house.
Q. Who built that fence?
A. My grandfather.
Q. Is there a fence between your land and the land of Pias near Lauacan—an earth fence or a stone fence?
A. Yes; there are fences of stone and also earth in different parts.
Q. How many fences between your land and the land of Pias other than the earth fence you have just mentioned near the mill and which you said was built by your grandfather?
A. There is only one fence between my land and Pias which has been made by my ancestor.
Q. Who built the other fences between your land and Pias which you have just mentioned?
A. As I said, that fence has been constructed by my grandfather.
Q. Well, is there only one fence between your land and the land of Pias?
A. I have only there one fence but there are some other fences outside of my land.
Q. Outside of your land?
A. Yes.
Q. Who built those fences outside of your land?

Mr. HAUSSERMANN: Objected to as immaterial.
COURT: Objection sustained.

Q. What is the entire length of your fence between your land and the land of Pias constructed by your grandfather or by any of your ancestors?
A. This fence is about equal to the distance from here to my house.
121 Q. And that is the only fence constructed by your grandfather or any of your ancestors on the boundary between your land and Pias?
A. No; because all the fences around that land were made by my grandfather.
Q. What other fences than the one you have just mentioned between your land and the land of Pias was constructed by your grandfather?

Mr. HAUSSERMANN: Objected to because it is not intelligent.

COURT: Objection sustained.

Q. Who constructed the fences between your land and Piraso's land?

A. I have told that that fence was made by my grandfather.

Q. Well, there are two fences, are there not, between your land and the land of Piraso?

A. Only one.

Q. I mean earth fences between your land and the land of Piraso——

A. Only one.

Q. Have you repaired the fence between your land and the land of Piraso at any time during your life time?

A. Yes; I have repaired the fence between my land and Piraso's.

Q. Where was the wire fence that you spoke of in your examination before Judge Williams?

A. I took the wire fence away because the people were stealing it.

Q. Where was it before you took it away?

A. It was near the quarters of the scouts.

Q. Why did you put a wire fence there?

A. To keep out the cattle.

Q. When did you put it there?

A. In Spanish times.

Q. Was there not an earth fence at the same place where you put your wire fence?

122 A. Yes; there was an earth fence but the animals broke it down.

Q. Is there any wire fence around your land at present?

A. Yes; there is a wire fence now between Pias and my land; and the wooden fence that was there has been burnt up and I changed it into wire.

Q. Have you any other land than the land in question?

A. Yes; I own land where my house is situated.

Q. Have you a paper title to that land?

A. No.

Q. What did you mean, in your testimony before the Judge of the Court of Land Registration when you said in answer to the question, "Have you other property than that in question?" "Yes, the land where my house it, but the documents of this land are already completed."

A. There were some papers made but the authorities said those papers were useless.

Q. Who were the authorities who told you that your documents to the house where you live were useless?

A. The former Judge who came here from San Fernando who came here to take my testimony told me those papers were useless.

Q. Did you take out papers in San Fernando on both pieces of your land, the land at Lubas and the land where your house is, at the same time?

A. Yes; at the same time.

Q. Did you grow camotes on the land in Lubas?

A. Yes; I grew camotes during the Spanish times.

Q. Now how large or what part of the land was planted in camotes?

A. Very small part and this was situated between the quarters of the scouts and the new road.

Q. How large a part—indicate how much land was planted in camotes?

123 A. About one hectare.

Q. On this hectare on which you have had camotes planted, for how many years did they grow on that particular ground?

A. We got camotes twice a year.

Q. For how many years?

A. Two years.

Q. Did you not say your father lived in Tublay?

A. Yes.

Q. When you were asked the question by Mr. Haussermann before Judge Williams when they were up here before, "did your father own this land for more than thirty years" and you answered "I do not know; he was in possession a long time because he lived on the land and built his house there—you did not mean your father but your grandfather?

A. What I mean is my grandfather.

Q. How long has the wire fence between your land or the land claimed by you and the land of Pias been where it is now?

A. During the American times that wire fence was put there.

Q. Who was the Governor at the time you put the fence where it is now?

A. Governor Pack.

Q. Did you know Mr. Clark at that time?

A. Yes.

Q. You are called Capitan Mateo are you not?

A. Yes.

Q. Why are you called Capitan?

A. Because during the Spanish Government I was Presidente.

Q. Are you what is understood to be among the Igorrotes as a buckman?

A. Yes.

Q. What is a buckman?

A. A buckman is the name of a certain person or persons

124 who live comfortably.

Q. You have a son by the name of Sioco have you not?

A. Yes.

Q. Is Sioco acquainted with the land you are trying to register?

A. Yes.

Q. Was he with you at the time you pointed out the boundaries of this land to the American surveyor employed by Mr. Clark?

A. Yes.

Q. This Sioco knows, does he not, the places that were marked as monuments, or I mean knows the monuments used by the surveyor in running the lines?

A. I do not know if he has forgotten.

Redirect examination.

Mr. HAUSSERMANN:

Q. Did your grandfather die before or after you were born?
A. I was not born yet when my grandfather died.
Q. You mean your grandfather Bangley?
A. Yes.
Q. Do you know from whom your grandfather received that land?

Mr. BASSETT: Object to that question as incompetent.
COURT: Objection sustained.
Mr. HAUSSERMANN: Exception.

Q. Do you know the tradition of your family in reference to the source from which that land was obtained by the family?

BASSETT: Object to the question as incompetent.
COURT: Objection overruled.
BASSETT: Exception.

A. My father gave to me that land.
Q. Did your father tell you from whom he received it?

125 Mr. BASSETT: Objection.
COURT: Objection sustained.

Q. Do you know what tradition is in your family in reference to how your family acquired that land?

Mr. BASSETT: Objected to on the ground of incompetency.
COURT: Objection sustained.

A. I only know that my father acquired that land from my grandfather.
Q. When the Americans arrived in this province, state whether or not there was a trail leading through the land in question from here to Lauacan?

Mr. BASSETT: Objected to as leading.
COURT: Objection overruled.

A. Yes; there was a trail which was built during the Spanish times—a bridle trail about so wide (witness indicating space of from two and a half to three feet).
Q. State whether or not the American Government built a road through that land since the American occupation.
A. Yes; at the time of Governor Whitmarsh that wide trail has been built through my land.
Q. Where is the new road in reference to the old trail?
A. The new trail almost is parallel with the old trail and in Lauacan the new trail crosses the old trail.
Q. State what, if anything, was on that old trail as it entered your land at the point where it approached your land?
A. There is a cut.
Q. How many cuts were on that old trail during Spanish times and when the Americans came here?

A. Two.

126 Q. State where those cuts were located in reference to the old trail?

A. At my boundary with Piraso in Lauacan and at my boundary on this side.

Q. Who removed those cuts?

A. The people took away the cuts during the American times and also they took away the papers that I put there.

Q. What papers did you put there?

A. The paper contained my notice that that land is owned by me so the Americans do not destroy or took away.

Q. Do you know when those gates were torn down and by whom?

A. Those gates were torn down when they were building the new trail and I do not know by whom because there were so many people.

Q. Do you know whether it was the people who were employed to build the road who took them down or not?

A. No; I do not know them because there were so many of them, so many people.

Q. Did you protest to the authorities about removing your gates?

A. No.

Q. Why not?

A. I only protested about the new trail they were building through it.

Q. To whom did you protest about building the new trail through it?

A. Sigñor Whitmarsh when he was Governor.

Q. State what, if anything, you did after the new trail was built in reference to re-establishing your boundary lines near the new trail.

A. When the new trail was built, I made my protest to Mr. Whitmarsh and he said to me, "We cannot do anything because that trail was built by the Government."

127 COURT: State the question again.

A. I did not do anything in reference to the boundary of my land because there was a fence of earth there.

Q. When your new gates were destroyed, at the time of the building of the new road, what if anything, prevented your cattle from getting off the land?

A. What I did, after the destruction of the gates, I took away from there the cows and I put them in another place.

Q. State whether or not before you took those cows away, you constructed anything across the new trail to keep your cattle off?

Mr. BASSETT: Objected to as leading.

COURT: Objection overruled.

A. Since the destruction of the gates I did not put anything up.

Q. How many times were your gates destroyed during the American times?

A. Only once.

Q. Were there any gates destroyed after the new road was built?

A. Before the construction of the trail my gates were destroyed—after the trail was built, no gates were destroyed.

Q. After the new road was built state whether you placed any obstruction across the road to prevent your cattle from getting out which was taken away by the American authorities?

A. I did not put anything because there were so many people who passed along the trail and I was asked not to put any obstruction because the greater part of the people who passed were Americans.

Q. When this land, which you are now attempting to register situated at Lubas, was measured at the time of Comandante
128 Bejar, did you walk around the boundaries of that land and show your boundaries to the surveyor at that time?

A. Yes; because we, ourselves, measured the land according to the order of the Spanish Governor.

Q. Now, when you were ordered to survey that land by Governor Whitmarsh, did you go around the same boundaries and show the Surveyor Razon the same boundaries you showed at the time of Bejar?

A. Yes; because the surveyor in Mr. Whitmarsh's time, he could not follow my boundaries and therefore, I, myself went with him around that land to point him out the boundary.

Q. And were the same boundaries pointed out to the American Surveyor who was employed by Mr. Clarke?

A. The same boundaries.

Q. And is that the land which you are now attempting to register?

A. Yes.

Q. State whether or not the river or creek which runs down near or at the mill, runs across a part of your land?

A. Yes; the river passes through a little part of my land down below the saw mill.

Q. Do you remember when that saw mill was built there?

A. At the time of Governor Pack.

Q. Did you protest about that mill being put there?

A. I had an intention to protest but I was afraid because the same Governor was the man who put the saw-mill there.

Recross examination.

Mr. BASSETT:

Q. You stated that the people took away the papers that you placed at the gates at the same time that they took away the gates, did you not?

A. Yes; I stated that.

129 Q. And you further stated that those papers contained a notice that you were the owner of that land did you not?

A. Yes, sir.

Q. Can you read and write?

A. No.

Q. How do you know what those papers contained then?

A. Because when that paper was made, I caused the same to be read by other people and that is what they said to me.

Q. Who made that paper?

A. The secretary of the province—Otto Shearer.
Q. Why did you post those papers?
A. Because some Americans wanted to build their houses there and already one house was built by a miner.
Q. Who told you to post the papers, if anybody?
A. Because Mr. Whitmarsh and Otto Shearer advised me to put that notice there in view of my request to them how could they do about the Americans who wanted to build their houses there.
Q. What official position do you at present hold under the Igorrote according to their own customs?
A. I have no position.
Q. What official position have you held in the past among the Igorrotes themselves according to their own customs?
A. No; I had not held position among ourselves because we only held positions when the authorities ordered us to devote our services.

Mr. HAUSSERMANN: I desire to introduce in evidence the certified copy of the record of P. E. Wagar, formerly Provincial Secretary of the Province of Benguet and *Ex-Officio* Notario Publico of Benguet,—found upon pages 8 to 16 inclusive of the record in this case.

130 Also the record of the Examiner of Titles to be found on pages 22 to 23 inclusive of the record.

Mr. BASSETT: I object to that on the ground that it is incompetent.

COURT: Objection is overruled. Provisions of Section 30, Act 496 providing for the examination of titles by an examiner of the court the mandatory provision of the law and statutes essential requirement to perfect and complete a
in order to render judgment. As such it has unquestionably been sent up to this court in addition with the record; act 496 provides that the party appealing shall cause to be sent up to the Court of First Instance such parts and portions of the record as he shall deem material. The Attorney General having sent up to this Court these documents in the record on behalf as material, the court will admit the document on the ground stated in the dicto of the court just spoken.

Mr. HAUSSERMANN: I desire to offer in evidence the plan of the property sought to be registered made by D. Picton Davies, on the 25th of May, 1893 and marked for identification by this court "Applicant's Exhibit 'A.'"

JUAN CARIÑO recalled for the purpose of cross-examination, being duly sworn, testified as follows:

Mr. BASSETT:

Q. In your examination before Judge Williams, court of Land Registration in Manila, on February 8th last, you stated that you and your brother, Mateo Cariño had applied for the adjustment of the titles to certain lands situated in this province; is that a fact?

A. Yes; I stated.

131 Q. Where did you present your application?

A. In Trinidad under the Spanish times.

Q. Who was the Governor to whom you presented your application, or the Comandante?

A. Jose Martinez, Comandante.

Q. Do you remember the year in which your application was presented?

A. I do not remember the date—I only remember that the application was presented before Comandante Martinez.

Q. Do you remember how long Jose Martinez had been Comandante of that province when you presented your application?

A. According to my estimation about one year or less.

Q. Who wrote your application?

A. Jose Madaran.

Q. Where is Jose Madaran now?

A. He died.

Q. When did he die?

A. I think about ten or fifteen years ago.

Q. Who was the Comandante of this province at the time Jose died?

A. I am not quite sure, but I think Comandante Yturrega.

Q. What did your application contain?

A. My application contained that I desire that I have a title for some of my land.

Q. Did you present with your application any other papers?

A. No.

Q. How many hectares did the land for which you petitioned a written title contain?

A. I do not know because at that time we measured our land by fathoms and decide boundaries.

132 Q. Are you not in possession of that land at present?

A. Yes; I own them at present because I am not dead.

Q. Do you know how many hectares they contain?

A. No; I do not know.

Q. How many fathoms around your land?

A. I have forgotten how many fathoms—it is a long time ago I presented the number to the Comandante and I did not take it in writing as I do not know how to write.

Q. Did you pay Comandante Martinez a fee at the time you presented your petition?

A. I paid him 20 pesos as fee.

Q. Did Mateo present his application at the same time you presented yours?

A. Yes; and some other people from Baguio.

Q. How much did Mateo pay?

A. That is what I do not know, because after giving the money I went back to Tublay.

Q. Did you receive your written title?

A. No.

Q. Do you know who wrote Mateo's petition?

A. I do not know, because they came from this place,—Baguio.
Q. At the time you presented your petition, who was present?
A. The Clerk there.
Q. Who were those clerks?
A. Emigdio Octaviano and also Toribio Valdez.
Q. And Mateo presented his petition at the same time you presented yours?
A. At the same time we presented our petitions—the hours of our return were not the same, because I went back first.

133 Redirect examination.

Mr. HAUSSERMANN:

Q. Do you know the land at Lubas which Mateo Cariño is attempting to register in this action?
A. Yes; I know, because at that time we presented our petitions he spoke to me about the plan.
Q. Is that the same land for which he applied to Martinez for a title?
A. Yes; the same land and also the land at Baguio.
Q. Do you know from whom Mateo received that land at Lubas?
A. From our parents.
Q. Do you know from whom your father received the land?
A. The father of him.
Q. Do you know the tradition of your family as to the source from which your grandfather obtained that land?

Mr. BASSETT: Object to the question as incompetent and calling for hear-say.

COURT: Objection overruled.

Mr. BASSETT: Exception.

A. I only know that that land came from my father and I have been told by hear-say that my father acquired that land from my grandfather.

CAPITAN PIRASO, re-called for the purpose of cross-examination, being duly sworn, testifies as follows:

Mr. BASSETT:

Q. Do you know the land at Lubas claimed by Mateo Cariño?
A. Yes.
Q. Do you claim land which adjoins the land claimed by Mateo?
A. Yes.
134 Q. What forms the boundary line between your land and the land of Mateo.
A. There is a fence between them.
Q. What kind of a fence?
A. Earth fence.
Q. How long is the fence between your land and the land of Mateo?
A. According to my estimation about the distance from here to the Governor's house.

Q. How long have you been in possession of the land which adjoins Mateo, which you claim?

A. Since the days of my earliest recollection my father gave to me that land.

Q. Are there fences around your land?

A. Yes.

Q. Who built those fences?

Mr. HAUSSERMANN: Objected to as incompetent, immaterial and not within the issues of this case.

COURT: Objection overruled.

A. My father built those fences and I repaired some parts of them.

Q. You testified that there was an earth fence between your land and the land of Mateo—who built that fence?

A. Bangley, Mateo's grandfather.

Q. Then your father did not build the fence between your land and Mateo's land?

A. No; the fence there has been made by Mateo's grandfather.

Q. Was that fence built before your father got possession of the land?

A. Yes; there are now some carabao inside of those fences.

135 Q. To whom do those carabao belong?

A. To me.

Q. Did you build the fence that runs parallel to the new Manila Dagupan Wagon road through your land?

A. Yes.

Q. When did you build that?

A. At the time of Mr. Whitmarsh.

Q. When you heard that Mr. Clarke had bought Mateo's land did you offer to sell him your land which adjoins Mateo's also?

Mr. HAUSSERMANN: Objected to as incompetent and immaterial.

COURT: Objection overruled.

Mr. HAUSSERMANN: Exception.

A. No; I did not offer him, notwithstanding that I heard that Mr. Clarke wanted to buy the land of Mateo Cariño.

Mr. M. A. CLARKE, being re-called for cross-examination, being duly sworn, testified as follows:

Mr. BASSETT:

Q. When did you first come to this Province, Mr. Clarke?

A. In June, 1900.

Q. Are you acquainted with the land that Mateo Cariño is trying to register?

A. Yes, sir.

Q. When did you first become acquainted with that land?

A. At the time I first came here, June, 1900.

Q. How did you happen to become acquainted that time?

A. I sent a prospector up here in January or February, 1900;

he returned to Manila and brought back some samples—the
136 man was also a farmer and he told me that it was a very fine land and a very fine country and upon his discoveries regarding gold, etc., I came up in June. On our way out, or returning from the district known as Batwan, we passed through Lauacan and he pointed out the land known as Lubas and owned by an Igorrote, as being a very desirable piece of property, he having looked it over, and I instructed him to get what information he could on it or about it—he wanted to try and home-stead a piece of land and I told him the first thing to do would be to look up, if possible, what right the Igorrote had to it or under what conditions it was.

Q. You say it was a desirable piece of land—for what?

A. That remained to be seen; it might have been for agricultural purposes or fruit.

Q. You looked at it—what did you consider it desirable for?

A. My idea was to plant fruit there.

Q. Now, Mr. Clarke, what part of the land is desirable for fruit there?

A. That is not possible to say—there are several very pretty spots there that would, in my estimation, probably grow fruit.

Q. Probably grow fruit—don't you think the other lands adjoining are more desirable for fruit—for instance, the land where the buildings of the military reservation are situated, and those table lands there?

A. I don't know that it would—it might, but the general lay of the land was very desirable and it is possible, I think, to get water on for irrigating purposes or any other purposes you want, while up on the military reservation or back this way, I don't think it is possible.

Q. How would you get any water on the level parts of that land for irrigation?

A. I believe there is a spring up near the military reserva-
137 tion or head of that creek.

A. Isn't that really the lower part of your land where the river comes—isn't it lower than the level parts of your land?

A. You don't have to have level land to grow fruit.

Q. I am talking about irrigation—isn't that spring that you refer to below the level of a greater part of your land?

A. I don't know; I didn't attempt to have it surveyed, but I believe the spring is high enough so it can be covered by water; I imported trees for that purpose.

Q. When did you import your trees?

A. I think it was in 1901—I am not positive.

Q. When did you get the option on this land, Mr. Clarke?

A. I think that was also in 1901.

Q. What time in 1901, can you state?

Mr. HAUSSERMANN: Objected to for the reason that the option referred to by the Counsel for the Government is a matter of record on file in the office of the Provincial Secretary of this province.

COURT: Objection sustained.

Q. At the time you got an option on this land, Mr. Clarke, was the Manila and Dagupan Wagon road built?

A. Yes, sir; it was started.

Q. Now the land, Mr. Clarke, that adjoins the Manila and Dagupan wagon road—what would that be useful for—on either side of the road—on the side of the hill that the road winds around?

A. The condition would develop that—whatever conditions might arise.

Q. Under ordinary conditions; without any speculation, for what would that land be used?

A. Well, I don't know—I got the land to have it and to do the best I could with it—whether for agricultural purposes or
138 not—it don't make any difference what it was.

Q. What could that land be useful for?

A. It would be useful for a great many things; either for agricultural purposes or for just as I say, whatever the conditions might arise as to the progress of the country—build houses on it if you want to—I don't see where that comes in.

Q. Could that land be cultivated—isn't it too steep for cultivation?

A. I have seen land cultivated in California with fruit trees growing on just as steep hills as that—I know a piece of property in California much steeper than that.

Q. Steeper than that?

A. Yes.

Q. Is it not a fact that that land is very rocky?

A. Not that I have seen—there are rocks at the lower part but that does not interfere with the growing of fruit at all.

Q. What do you think of that as grazing land?

A. It is al- right.

Q. Do you consider it is more valuable as grazing land than timber land?

A. I don't consider the land timber land wholly—there is some timber there but I never considered that as particularly valuable.

Q. What would you estimate to be the difference in the elevation from the road to the top of the hill that goes up toward the military reservation at the lower bridge?

A. Well, I don't know—perhaps 150 ft. or something like that.

Q. Now, from the point from the first bend in the road toward Baguio, toward the lower bridge, toward the lowest point of your land, what would you consider the elevation of the road at that point, above the lowest point of your land?

A. Take the level of the road to both places?

139 Q. From the level of the road to the first crest as you come down to the ravine down to the lowest point of your land—I mean the land of Mateo Cariño.

A. You know that varies, Mr. Bassett—200 ft. perhaps, that is my remembrance of it.

Q. Is is not a fact, Mr. Clarke that miners on two different occa-

sions attempted to locate claims upon this property which you have an option on?

A. Yes; I have heard they have—I don't know whether it is once or twice.

Q. Do you know Mr. Reavis?

A. Yes.

Q. Do you consider him a good miner?

A. I don't know.

Q. Did you know McDonald?

A. Yes.

Q. Was he an experienced miner?

A. No, sir.

Q. Now when you took your option on the land in question, did any of the adjoining owners attempt to sell you their land?

A. When some of the adjoining owners learned that Mateo had optioned or sold his land to me they also expressed, some of them, through Mateo and Sioco, their desire also to sell.

Q. Was Piraso's land offered to you?

A. That was, I think, purchased by Mr. Probasco.

Q. Did you not have an offer of that land to you?

A. Not directly.

Q. Were you not informed that you could buy that land?

A. Yes.

Q. And were not fences built for the purpose of selling that land to you?

140 Mr. HAUSSERMANN: We object to the question.

COURT: Objection sustained.

Mr. BASSETT: Exception.

Q. You are the party who is trying to register this land, are you not, Mr. Clarke?

A. Mateo is trying to register it.

Q. Are you bearing the expenses of the suit?

A. I have so far—I reckon he will share his part of it.

Redirect examination.

Mr. HAUSSERMANN:

Q. Mr. Clarke, in your estimation, state whether or not that land would be considered agricultural as distinguished from mineral land.

A. Yes, sir; it would.

Q. What American official, if any, had been through this province before you commenced to inquire in reference to the ownership of that land?

A. No one, that I know of.

Q. Had any member of the Civil Commission been up through this province to your knowledge, prior to the time that you commenced to investigate the title of this land?

A. I am positive they had not.

Q. State what, if anything, in reference to taking photographs of the vicinity of Baguio or any land around Benguet province.

A. When I came up, I brought with me as my guest a gentleman

by the name of Johnson and he took a great many photographs of all of our trip.

Q. At the time that you first arrived in Baguio and commenced to investigate the title to the piece of land that is in question in this suit, with the view of purchasing the same, had you any idea,
141 at that time, or had you heard either directly or indirectly of any purpose on the part of military authorities of the United States or Civil government to reserve any part thereof for military purposes or for the purpose of locating in this province a summer capitol?

A. I had not.

Q. What if anything, did you do, after returning to Manila from your trip in Benguet province, in reference to informing any of the Civil Government of these Islands in reference to the general lay of land, etc., in the Province of Benguet?

Mr. BASSETT: Objected to as improper re-direct examination.

COURT: Objection overruled.

A. I showed these pictures to Mr. Pepperman—I have forgotten his official position, but I think it was Assistant Secretary to the Commission, and he asked me to come over and show them to the Commission, and I told him when they invited me to do so I would; a few days later Mr. Worcester, I think it was, requested that I bring the pictures over and show them and I went over and Governor Taft, General Wright and Mr. Worcester I am sure were present. and I don't know what others—they looked the pictures over and asked me about the general temperature and conditions of Benguet.

Q. At that time had you any information, either directly or indirectly that the Civil Government or the Military authorities of the United States were contemplating reserving a portion of this province for military purposes or for the purpose of a summer capitol?

A. No, sir.

Q. When, in reference to the taking of this option, did you
142 first learn of the military authorities reserving or attempting to reserve a portion thereof for military purposes?

A. The first that I knew positively that they had laid aside, or intended to lay aside some of that land,—I sent a man to build a house on it and he was ordered off.

Q. By whom?

A. By the Lieutenant in command of the military authority.

Q. What, if anything, have you done since you learned of the purpose of the military authorities to take a portion thereof for military purposes, to prevent the authorities from carrying their plan into force and effect?

A. Done nothing.

Q. State whether or not you had any talk with the Commanding General at Manila and also with the civil Government with a view of pointing out to them other land more suitable for military purposes.

A. I learned that I had been accused, and they termed it this way—of sharp practice in having gotten information that the Gov-

ernment expected to reserve a portion of this land or make great improvements, and on this information had secured my option—I called on General Davis and related the whole history of my operations in Benguet—also on General Wade and Governor Taft, and each one of those gentlemen intimated that they had learned or heard that those fences had been constructed by Mateo Cariño after American occupation, so that he could get his title and they also intimated that I was perhaps the one who asked him to do those things and of course I told them the story in regard to my operations, and told Governor Taft that I believed the situation for military purposes was too close to the city of Baguio and if Baguio grew, it would naturally grow down the Benguet road and if the mining interests and fruit of agricultural interests should develop as we hoped
143 they would, that very soon their military reservation would be in the center of the population of the city of Baguio; that was, however, my opinion.

Mr. BASSETT: I move to strike out the entire answer as irresponsive and not responsive to the question.
COURT: Objection overruled.

Q. State whether or not you desired the military authorities to take a part of said land for military purposes.

Mr. BASSETT: Objected to as irrelevant.
COURT: Objection sustained.

Q. Is that the only talk you had with the military authorities?

Mr. BASSETT: Objected to as irrelevant.
COURT: Objection overruled.

A. Yes, sir. I had a conversation with Col. Carball, who was at one time Judge Advocate to the Philippines.
Q. When did you have a conversation with him?
A. In January.
Q. Of what year?
A. Of this year.
Q. State whether or not you had any conversation with reference to the military authorities before you learned that they had finally determined to reserve a portion of said land for military purposes in reference to getting them to abandon that purpose.
A. Yes, sir.
Q. With whom?
144 A. With General Davis.
Q. When?
A. That was about two years ago.
Q. What conversation did you have with him?
A. I asked him to not put the military reservation there—I did not want it there as far as I was concerned—there were better places.
Q. State whether or not you had any talk of such nature with the Civil Governor of these Islands.
A. With Governor Taft, yes.
Q. What, if any.

Mr. BASSETT: Objected to as irrelevant.

COURT: Objection overruled.

A. It was also intimated that I had secured that option in order to realize from the Government, and that I would be more then anxious and pleased if they did not put the reservation or any kind of a reservation——

(Witness asked permission to make an explanation.)

In reference to my conversation with General Davis he had made some statements regarding Americans in the Philippines upon information, securing options in order to get money out of the Government and that is the time that I went to call on him and explained to him thoroughly that I was very anxious that he should not put any military reservation here on this property.

Q. Have you other interests in Benguet province other than an option on this land?

A. Mining claims.

Q. It is in testimony here that Mateo Cariño applied for possessory proceeding before the Court of First Instance in Union
145 Province state whether you had anything to do, either directly or indirectly in the proceeding.

A. I had nothing to do with it whatever.

Q. State whether or not you had had any conversation with Mateo prior to the proceeding instituted in that court at San Fernando?

A. No, sir; I had not.

Q. Did anybody else for you?

A. No, sir.

Q. State whether or not, you or any person for you, either directly or indirectly in any manner, advised Mateo Cariño to take out such proceedings before the Court of First Instance in Union Province?

A. No, sir.

Q. State whether or not you or any person for you, either directly or indirectly advised or directed Mateo Cariño to place any fence around the land in question?

A. No, sir.

Q. State whether or not you had any conversation with Mateo Cariño with reference to the repairing of the fences around said land.

Mr. BASSETT: Objected to as irrelevant.

COURT: Objection sustained.

Recross-examination.

Mr. BASSETT:

Q. When was General Bell in this province, do you know?

A. I remember he was up here but I can't tell you when.

Q. Before or after you came?

A. After I came.

146 Q. How long?

A. I should say a year.

Q. Where was General Davis at the time you had a general conversation with him?

A. In his office at Manila.
Q. At that time what was his official position?
A. Commander General of the Philippines.
Q. You say that was two years ago?
A. It seems to me about that.

YGMEDIO OCTAVIANO, being duly sworn, testified as follows:

Mr. HAUSSERMANN:

Q. What is your name?
A. Ygmedio Octaviano.
Q. What is your age?
A. Fifty-three years, nine months.
Q. Where do you live?
A. In Baguio.
Q. What official position, if any, do you now occupy?
A. Provincial Secretary of the Province of Benguet.
Q. How long have you lived in Benguet province?
A. During 27 years of my residence in this province, I have been out one year and a half.
Q. What official position, if any, did you occupy during the time of the Spanish Government?
A. Since 1876 to 1881 I have been the Clerk and at the same time, Secretary—and from '81 to '90, I was an official interpreter of the military commander of Spain of the province of Benguet.
Q. Since '90?
A. I was Justice of Benguet till 1893 and until 1898 I was
147 Professor or instructor in the Igorrote school at Daklar in the province of Benguet.
Q. Do you know the applicant, Mateo Cariño?
A. Very well.
Q. Did you know his father during his life time?
A. He was my very intimate friend.
Q. Do you know when the father of Mateo Cariño died?
A. Yes.
Q. What year?
A. I am not sure, but he died at the time of the Commander Billena who served from March '81 to '85 or '86.
Q. Do you remember the Royal Order of Christina dated February 13th, 1894, in reference to the inhabitants of these Islands applying for written title to their lands?
A. I remember it very well.
Q. Do you know whether or not the Igorrotes of this province attempted to obtain written titles to their property in pursuance of said Royal Order?
A. Perfectly.
Q. State whether or not many of the inhabitants of this province made application after the publication of that Order for written title to their lands.
A. Several of them, not only the people from Benguet, but also the people from surrounding pueblos presented their petitions during the time of Comandante Billena.

Q. Do you know whether or not any of them applied during the time of Jose Martinez?

A. I do not know.

Q. Were you the Government official during the time of Jose Martinez?

148 A. No; at the last part of his time, before his return, I was appointed Secretary in that time since '93.

Q. Were you here during the time of Bejar?

A. In Daklan.

Q. What were the results—if you know—of the applications which the people of this province made for their title to their lands as testified by you?

Mr. BASSETT: I object to that, your Honor, on the ground that the result is a matter of record and this it not competent evidence.

COURT: Objection overruled.

Mr. BASSETT: Exception.

A. These applications were sent to the proper authorities and after some years, by direction of the Director of the Administration Civil, or the Intendencia at Manila, they were returned to the parties who made the application with the request to state whether they insisted upon their petitions—some of them insisted upon their application and several of them withdrew—and furthermore, the others, who did not present their applications, could at that time.

Q. How do you know that they could present them—those that failed—what do you mean?

A. That those who did not present their applications, they could, if they desired to present theirs at that time.

Q. Who told them that they could present them at that time?

A. I am not quite sure, but I think in accordance with the regulations in force concerning public lands and the Royal Order, and for that purpose it was published according to the instructions, and the Spanish Government in consideration of the status of the

149 people here being Igorrotes, extended the time for some period, to a certain time, which I do not remember.

Q. Do you know the land at Lubas, Mateo's land, which was occupied by him during the Spanish times?

A. No.

Q. Don't you know the land at Lubas, Mateo's land?

A. No, in that time I did not know.

Q. Did you know it at any time?

A. During the present time only, that is, during the time of the occupation of the Americans.

Cross-examination.

Mr. BASSETT:

Q. Who was the Comandante who notified the people of this province that the Government had extended the time in which they could present their application for the composition of their lands?

A. If I am not mistaken, it was Comandante Billena and Martinez.

Q. Did you know or did you hear of such order after you left Baguio or Trinidad to go out as a school teacher?

A. No, I did not. I did not hear anything more about it—that was in the year 1893.

Q. Did you tell Mateo Cariño at any time after the time of Comandante Jose Martinez, that it was not necessary for him to secure a paper title under the decree of February, 1904?

A. I do not remember such interpretation at that time—I was not with Martinez because then I was in that land as teacher at Daclan. At no time of Martinez I was employed by him, and went as a teacher in that land from November 23rd, '93.

Q. Were you in the office of Don Jose Martinez, in the year 1894 when Mateo Cariño, Juan Cariño and other Igorrotes presented petitions for composition of their lands?

150 A. No; I think I could possibly have been in the office of Martinez without the knowledge, but I was not employed and had no motive of knowing.

Q. You were not employed by Martinez or in the office of Martinez at that time?

A. Never.

Q. Do you know the land that is now being claimed by Mateo Cariño in Lubas?

A. Now, yes; I know by reference but before, no.

Q. You were on that land, were you not, last week?

A. Yes; it is true.

Q. Do you know what use the land that you visited last week, was put to in Spanish times?

Mr. HAUSSERMANN: Objected to as not proper cross-examination.

COURT: Objection overruled.

Mr. HAUSSERMANN: Exception.

A. No.

Q. When you were on the land last week your attention was called to the condition of a sod or earthen fence, was it not?

Mr. HAUSSERMANN: Objected to as not proper cross-examination.

COURT: Objection sustained.

Mr. BASSETT: Exception.

The Counsel is informed that the question on which the Court has ruled as being improper cross-examination, is admissible at such time in the proceedings in this case as Counsel for the Philippine and United States Government elects to make this witness their own witness.

151 Applicant rests his case.

IGMEDIO OCTAVIANO being recall- on behalf of the Government of the United States and Philippine Islands.

Mr. BASSETT:

Q. Was your attention called to an earthen fence pointed out by Sioco, son of Mateo, on last week, as the boundary of his Father's land?

A. Yes.

Q. What condition was that fence in?
A. I am not sure, but I think the condition of that fence was like the old fence of those times, and during Spanish Government, each town had a public common, but I do not know whether this was the exclusive property of Mateo or not.
Q. The question I asked was, what was the condition with reference to whether it had been recently constructed or not.
A. My judgment is, that it was old, notwithstanding there are some new repairs—I did not see very well.
Q. How many years old would you estimate that fence to be?
A. To my judgment I should thing about ten or less or more years but it is difficult for me to estimate the age of the fence because the nature of the land there is different from what it is in Trinidad.

Cross-examination.

Mr. HAUSSERMANN:

Q. At whose invitation did you go to that land?
A. At Sigñor Worcester's for the purpose of acting as interpreter in case of necessity.

152 IGORROTE BAYENG, being duly sworn, testified, as follows:

Mr. BASSETT:

Q. What is your name?
A. Bayeng.
Q. Where do you live?
A. Lauacan.
Q. Do you know where Mr. Wagner's saw-mill is situated?
A. Yes.
Q. Do you know who is the owner of the land on which that mill is situated?

Mr. HAUSSERMANN: Objected to as incompetent, irrelevant and immaterial.
COURT: Objection overruled.
HAUSSERMANN: Exception.

A. Capitan Mateo owns the land which is at this side of the saw-mill and the other side of the saw mill is mine.
Q. What is the boundary between your land and the land of Mateo?
A. The river.
Q. What river?
A. Lubas.
Q. How far does your land run toward the new Manila & Dagupan road along the Lubas from the mill?

Mr. HAUSSERMANN: Objected to for the reason that the usual notices were published as required by the statute, and in the court below a default was entered into against everybody, except the Government of the United States and military authorities.

COURT: Objection overruled.
153 Mr. HAUSSERMANN: Exception.

A. It is near.

(Exhibit "A.")

Q. This is the wagon road—this is a bridge across Lubas river this is the Lubas river, and this is the mill—now, how far along this river does your land extend?

A. It is near to the road.

Q. I show you here (Exhibit "A") a rough sketch, showing the Manila & Dagupan wagon road—the Lubas river and Wagner's saw-mill, and ask you to indicate on the sketch how far along the river your lands extends?

Mr. HAUSSERMANN: It is better that we go and inspect it.

COURT: Are you able to so understand that map as to mark the place where your land ends—can you do it?

—. ——.

COURT: It appears to the Court that the map is perfectly unintelligible to the witness and none of its explanation is understood by him.

Q. This that I am now pointing out is the road (running pencil along mark intended as the road).

A. I understand the road now.

Q. This is the Lubas river (indicating the line intended for the Lubas river).

A. Yes.

Q. This is the bridge at the road across the Lubas river (indicating the point intended for the bridge).

A. My property extends from "A" (on map) to "B."

COURT: The interpreter, under direction of the witness, and at the places indicated by the witness marks two crosses on the line representing Lubas river, which counsel marked "A" and "B" respectively.

154 Q. Who built the earth fence near the saw mill?

A. The fence near the Lubas river was built by my grandfather who gave to my father and from my father I get it.

Q. Did you ever cultivate the land along the river?

A. Yes; I cultivated it for garbi and sweet potatoes.

Q. How long has it been since you cultivated it last?

A. 3 years ago.

Q. Did anybody other than you cultivate the land on the same side of the Lubas river that you cultivated your land on?

A. Only me and my brother cultivated that land.

Q. You said the land on the opposite side of the river belonged to Mateo Cariño?

A. Yes.

Q. From whom, if you know, did Mateo get that land?

A. Mateo Cariño inherited that land from his father.

Q. To whom did that land belong before Mateo inherited it from his father?

A. I do not know of my own knowledge—I have been told that it was inherited my Mateo Cariño from the father of his father.

Q. Do you know the father of the wife of Mateo Cariño?

A. Yes; I know.

Q. Did he ever live on the land that adjoins your land?

A. Yes; he lived there.

COURT: What was that man's name?

A. Dangbis.

Q. Did you ever hear that he was the owner of that land?

A. From my earliest recollection I have heard people say that he was the owner of that land.

Q. How did Mateo become owner of the land?

A. Yes; because Mateo Cariño is married to the daughter of Dangbis.

155 Q. From whom did Dangbis get the land?

A. I only know that Dangbis was the owner of that because I was a little boy when I first know that land.

Cross-examination.

Mr. HAUSSERMANN:

Q. Do you know where Mateo lives now?

A. Yes, I know.

Q. Isn't it a fact that the land on which Mateo lives now he inherited through his wife or his father-in-law?

A. Yes.

Q. Isn't that the land that you had in mind when you said Mateo inherited that land from his father-in-law?

A. Yes.

Re-direct examination.

Mr. BASSETT:

Q. Did not Mateo inherit the land on the opposite side of the Lubas river from your land from his father-in-law also?

A. Yes.

Recross-examination.

Mr. HAUSSERMANN:

Q. Who do you work for?

A. We work for ourselves.

Q. Have you been doing any work for Mr. Wagner?

A. Yes.

Q. Did not Mr. Wagner employ you to find evidence in this case against Mateo Cariño?

A. No.

Q. Aren't you a secret service man?

156 A. No.

Q. Is Mr. Wagner paying you money for the use of the ground on which the mill is located?

A. No.

Q. Who told you to come here to testify?
A. Sigñor Wagner sent me here.
Q. Tell the judge what Mr. Wagner told you to tell here.
A. He did not tell me anything.
Q. Didn't Mr. Wagner tell you to come here and tell the Judge that Mateo Cariño got that land at Lubas from his wife's father?
A. No.
Q. Do you know Wagner's housekeeper?
A. Yes, I do.
Q. Did she tell you what to testify to here?
A. No.
Q. Who told you that Mateo got this land at Lubas from his father-in-law?
A. Nobody told me that, but I know it.
Q. Isn't it a fact, that for a period of time, during the Spanish times, that Mateo's father-in-law was living on that land and helping Mateo to take care of it?
A. Yes; he lived there, because he planted sweet potatoes and garbi.

COURT: Now then witness, the Court wants to know from you—you have testified very clearly that the people said that Mateo Cariño inherited this land from his father's father—you have also said that the people here said that Mateo Cariño inherited this land from his wife's father—which one of your stories is true?
A. The truth is that Mateo Cariño inherited that land from his father.

157 COURT: You have told two stories as to who Mateo inherited this land from—one was that he inherited it from his wife's father and the other from his father's father—which one of the stories is true?
A. He inherited it from his wife's father.

Mr. GEORGE HAYWARD being first duly sworn, testified as follows:

Mr. BASSETT:

Q. What is your name?
A. George H. Hayward.
Q. How old are you?
A. 34 years.
Q. Where do you live?
A. Baguio.
Q. How long have you lived in Baguio?
A. Since last August.
Q. What is your business?
A. Civil Engineer.
Q. How long have you been a Civil Engineer?
A. Seventeen years.
Q. Where have you worked in those 17 years at your profession?
A. Boston—Maine—Brookline—New York—Holyoke—and various other places around the country.
Q. Has your work been field work?

A. Field work and office.
Q. Did you learn your profession in the field or at school?
A. Mathematics at school and naturally got to gain experience as Engineer in field.
Q. You studied at a school?
A. Yes, sir.
COURT: Are you a graduate?
158 A. Yes, in the scientific department at Andover.
Q. Are you acquainted with the land that is described in the petition filed by Mateo Cariño for registration of certain property?
A. I am.
Q. Have you been over that land with surveying instruments?
A. I have.
Q. Where is that land located Mr. Hayward?
A. It is located about two miles south-east of Baguio and is what I would call the lower end of Baguio next to the northern boundary of Lauacan.
Q. Have you been around the entire boundary?
A. I have.
Q. Who pointed out the boundary of this land to you?
A. Sioco Cariño.
Q. At the time he pointed it out did he indicate the stations from which the Surveyor Davies had run his lines?
A. He showed me the stations on which he set up the instrument and also pointed out to me what he considered the boundaries of the property.
Q. Have you made a sketch of that land?
A. I have.
Q. Where is it?
A. I have it here.

(Map is produced and marked Defendant's Exhibit "B" for identification.)

Q. You haven't marked any stations?
A. It is merely a sketch showing the country by which different points may be located and recognized.
Q. What, Mr. Hayward, do the blue lines on this map represent?
A. They call them rivers around here—they are about the size of creeks.
159 Q. What do the red lines indicate?
A. The red line is the survey line.
Q. As pointed out to you?
A. As pointed out to me—and the one as near as I can go from what I was informed is the one described in the petition; there are no points on the ground whatever to survey from—all I could do was to take what Sioco pointed out to me on which we set up the instrument, and that was the best I could do and followed it around to get the location of what was surveyed.

COURT:

Q. There were no corner monuments?

A. No; not one; no points to mark Cariño's boundary around there.

COURT: No land marks?

A. Not one, with the exception of here and there which I can explain the reason of.

Q. What do the green marks indicate?

A. Green represents sod fences and to save questions and time I might say that green represents sod fence, that broken black line represents stone fence and the line of black dots represents the barbed wire fence.

Q. The road that runs through the land is the Manila and Dagupan road is it not?

A. Yes; Baguio & Dagupan road is correct.

Q. Do you know the name of the river which runs by the sawmill?

A. It is recognized as the Lubas river, beginning just up in beyond that road running through there is really the head of the Lubas river—it is a branch of the Bud river.

COURT:

Q. How large a stream is the Lubas river?

A. You can step across it except when there is a heavy shower—we get across back and forth many times; in fact, all the rivers are that way around here.

Q. At points other than those marked sod fence, stone
160 fence and barbed wire fence, are there any indications or any monuments to mark the boundary of the land?

A. There are none.

Q. If title should be registered to the land as pointed out to you by Sioco, would the person getting the title registered acquire the land due south of the buildings on the military reservation that are not bounded by the stream indicated on your map, first stream south of the buildings on the military reservation?

A. He undoubtedly would.

Q. If a person should register the title to property as indicated by Sioco and as described in the petition in this case, by lines and as property is described as you know, would he have title to property due east of the buildings of the military reservation other than that enclosed in the sod fence which runs there?

A. He would.

Q. If a person should register a title to the property described in the petition in this case and as pointed out to you by Sioco, son of Mateo, as being property of Mateo due north-east of the buildings on the military reservation, and if the boundary of his property is the Ipit river at that point, would he register property other than the property bounded by the Ipit river?

A. Yes.

Q. Mr. Hayward, is the Ipit river the boundary on the east to the lands pointed out to you and described in the petition?

A. No; it is not.

Q. How far is the boundary from the Ipit river?

A. Nearly 2000 feet; all of that or more.

COURT: Is there any water course or dry run which forms a boundary of this land on its east side?

A. There is a dry run only a short ways on the Bud river side and not in the Ipit river side. As a matter of information I
161 might tell the Court that it is going to be very hard for anybody to reproduce or run out lines for the land they seek to measure is so rough; it is almost impossible to measure it with any degree of accuracy up here.

Q. Do the boundaries described in the petition and pointed out to you by Sioco running southwest from the point on the Baguio Dagupan road nearest to Baguio follow the stream indicated on this map known as the Lubas river?

A. No; nothing is said of the Lubas river in it.

Q. If then, a person should register his title to property which is bounded by the Lubas river at that point, would he gain title to any property that he was not entitled to?

A. If the Lubas river is taken as a boundary and this line was registered, he would both gain and lose because it crosses and recrosses.

Q. Now Mr. Hayward, going due north from the point on the Baguio Dagupan road just indicated, point of Davies's beginning, is the boundary there described the stream, the Lubas river, as indicated on your map?

A. No; that stream is not mentioned in that description at all and he runs on distances and bearings and not having mentioned it, a man running out lines now would be confined to those points which would be indefinite and very likely the stream was what they intended but that description is in such form that it could not be known.

COURT: Mr. Hayward, the basis of this survey as described in the petition assuming that the petition was taken from the survey, with the point of beginning on the Baguio Dagupan road at a point near the bridge crossing the Lubas river, the entire description is based upon a survey by direct lines for its beginning and bounds and points on the compass—is that a fact?

162 A. That is the fact—the main difficulty.

Q. Now, in that description the point of beginning is a fixed and certain point?

A. No; that point was not fixed—we had difficulty in finding it—it was fixed in running 34,000 meters down from here and that is, well, I might say, ludicrous. That is not the way to fix a point—it is a sight easier to put a stake in the ground and measure two miles back—I know approximately where his point is but not exactly.

Q. Did you make a careful examination in and about the ground yourself with reference to the exact point as named by this Igorrote, to see if you could discover any past monument of any kind indicating Davies's beginning?

A. That is what I tried to do but failed, and had to postpone the examination until the Igorrote pointed out about where it was, and as an Engineer I would say he was nearly right but he had nothing to fix it by.

Q. As an expert in your profession, and based upon your knowledge and experience, state specifically what that survey is tied to?

A. Well, it is supposed to be tied to a rod here in the square but I defy any man on earth to locate this point from there.

Q. Is there a rod in the square at Baguio which is known, fixed definite, certain and easily ascertainable point?

A. It is not known to me. I have never been told of it and never knew it was here until I saw that description and I thought I knew every point in it.

Q. Have you examined this description carefully in connection with your own field work in making this survey?

A. Yes; I made them upon the same scale for comparison and I could not make mine agree with his at all.

163 Q. Then your testimony is, so far as you know, from a careful examination of the subject, the survey of Davies is not tied to any definite, fixed, certain and well known point?

A. It is not.

Q. Or monument or natural boundary?

A. It is not.

Q. What would be the proper way, Mr. Hayward, to describe the boundary of land which is bounded by a river or stream so that the boundary would be well fixed?

A. The only way to fix it without any difficulty or doubt would be to set a bound right on the back of the river where it would not be disturbed and in the description state it was along the center of the river or back, whichever it may be, to such and such a point without any reference to bearings except in a northerly or northwesterly direction, as the case may be.

Q. Is Wagner's saw-mill within the boundaries described in the petition and indicated by Sioco?

A. It is.

Q. How far within the boundary is it?

A. It is in by may be 20 or 25 feet—just inside the line.

Q. Is there anything along that boundary to indicate that it is a boundary?

A. No.

Q. Is this piece of property that has been pointed out to you enclosed?

A. In a way it is, but at a number of points it is not—you might say it is fenced about 22% of the distance around it—liberal allowance of fence making up about 22% of the perimeter.

Q. Would this property from your observations in going around the boundaries, if the 22% of the boundaries which are

164 fenced, were cattle proof, would this property be cattle proof—entire boundary be cattle proof?

A. No; it wouldn't and yet it would in one way because outside of this property at some points, there are fences which keep them from going any further.

Q. Are the streams or lines indicated as boundaries on the map by Mr. Davies and described in the petition in this case in such a condition at points other than those where fences exist, that cattle could not wander over them?

A. Cattle could get out of that piece of property always—no fences there could keep them out—they never stay inside of that place. The fences are supposed to be over here and there is one probably 100 years old which he takes as a boundary, but that is not the fence that made the property cattle proof—the fence down here made the property cattle proof—up over the hill there is a well preserved sod fence and down to the impassable cliff on this side, but that he tells me is not his line—his line is down there.

Q. The stone fence and sod fence just mentioned by you are not considered as boundaries to the land in question?

A. No; those are not the boundaries of what he claims.

COURT: How do you know?

A. Sioco showed me the point I asked him when I got down to that station—and saw that the wall turned up the hill and I asked him if that was his boundary and he said "No."

COURT: Is Sioco a claimant?

A. Sioco is the son of the claimant.

Q. How did Sioco happen to be with you at the time you made these measurements and observations?

A. Mr. Clarke sent for him and told him to show me where the points were.

165 Q. What Mr. Clarke?

A. Mr. M. A. Clarke—he told me he would send him over and show me where the points were.

Q. Now the stone fence and the sod fence which you have just spoken of—are they on the boundaries as described in the petition in this case?

A. Oh, no.

COURT: How far south of the boundary are they at the extreme point?

A. How far is that fence south of the boundary that he claims?

COURT: Yes; at the extreme point.

A. I don't quite understand.

COURT: You have testified that the sod and stone fence are south—now, I say, how far are they south at the furthe*r*est southern line?

A. Along the top of the ridge and will be a distance of about 300 yards.

Q. There is inside of that fence, is there not, another short strip of sod fence which he claimed as his boundary?

A. Yes.

Q. And from that fence where did his boundary go?

A. Runs directly down through a ravine on a line over the side of the hill and down into a gully below.

Q. To what points?

A. On three different lines it came to the bridge—to a point on south side of the bridge of the Baguio Dagupan road, this bridge being over another dry stream which drains the property.

Cross-examination.

Mr. HAUSSERMANN:

166 Q. Mr. Hayward, at whose instigation did you go on that land?

A. I was requested to by Mr. Bassett.

Q. For what purpose?

A. To run out that line, if possible, and find out the boundaries of the property claimed by Mateo.

Q. Who offered the assistance of Sioco, son of Mateo?

A. Mr. Clarke.

Q. Did he voluntarily offer the assistance?

A. I think so; we tried to find it and met him over on the land and we told him that we were unable to get it—he said he did not know himself and he would try to have Sioco out the next morning to show us.

Q. Now, did Sioco in fact, point out what he considered the boundaries of said land?

A. Yes; that is, as near as I could get at it with the Igorrote—I can get their intention—he showed me where he set the instrument up, and as we went along he pointed out where the fences were and bounds were so I got the idea. I think I got what he meant to claim.

Q. Now, if you had desired to survey the land as pointed out by him it was possible so to do, was it not?

A. Oh, I could have ascertained the area of it—there is no doubt of it.

Q. And mark the boundaries also?

A. Yes; or put bounds in so that a person could locate the property without any doubt.

COURT: You did not make a survey of the land as pointed out to you—the boundaries of which were pointed out to you by Sioco?

A. No; I simply went over and made a sketch to show the court or anybody the conditions of the thing as it stands.

Q. Now, you stated in your examination in chief, that the description of the land as surveyed and made by Mr. Davies
167 was not tied down to one known point?

A. No; it is not well located at all.

Q. The description reads as follows—"Beginning at the corner of Main St. and Emerson road a point located carefully by bearings to several prominent points and marked with a five foot iron bar driven solid into the ground, marked A as per sketch on plan—thence on a bearing of south 30 degree-, 34,646 meters to the two miles stone on the road side"—now regardless of the point of beginning hasn't he definitely fixed a point his terminal point of his line—isn't there a 2 mile post well known and located on the Baguio and Dagupan road?

A. It is not 34000 meters.

Q. Is there no more than one 2 mile post there?

A. That is all.

Q. As a Civil Engineer wouldn't you understand that the two

mile post which is on that road and well known to the community here, is the point that he referred to?

A. That is the point.

Q. Now taking that point, the two mile stone on the road side, isn't it possible for a Civil Engineer to run a line from that stone north 2*d* degrees and 50 minutes west to 52.2 meters?

A. He could within a foot or two of it.

Q. Now, regardless of this case isn't it possible for you to take this description and starting from that 2nd mile stone, run lines as described in this description?

A. It would be possible to run on all of those lines, but I would not say until it was finished whether it would enclose the piece of land or not, because I do not know about the errors in the survey.

Q. Then supposing you received an order from any person to take the two mile stone as a point beginning, isn't it possible for you to run lines as indicated in this description?

168 A. I can run lines as indicated, but I will not say that they run to the points that he shows; the magnet changes every year.

Q. That is true in all surveys?

A. Yes.

Q. For all practical purposes it is possible is it not?

A. To run lines—yes.

Q. Then, if by a decree of the court it should be decided that Mateo Cariño owned land as described in this petition, isn't it possible for a surveyor to take that description and mark out the boundaries in accordance therewith?

A. He will mark out boundaries and points—they will be somewhere.

Q. Then it results in this—as an expert—that we have a description here which it is possible to mark out by prominent monuments if we so desire, is it not?

A. Yes; you could place them by that boundary if the survey is correct—that is, if it balances around correctly it would be possible to locate monuments—if it closes you could locate points by it.

Q. Now, in addition to that, a person who pretended to know the actual physical boundaries of the land claimed by Mateo Cariño went with him around that land for the purpose of locating the boundaries of that land, did he not?

A. Yes.

Q. Then if the Government believed that the description as given by Mr. Davies was incorrect, it was possible for you to make a survey as indicated by a person, the son of the applicant who claimed to know the exact boundary?

A. Yes indeed; that is what I tried to represent in both places—what they actually did claim.

Q. The piece of land, the boundaries of which was pointed

169 out to you as being the land of Mateo Cariño by his son Sioco, is a piece of land is it not, which has well defined boundaries, either natural or that which was made by man?

A. All except a certain part of it—along the east side a fair pro-

portion has either walls made by some man or what would be considered natural boundary.

Q. You have only been in this country how long?

A. Year ago last January.

Q. Consequently you have no means of knowing in what state of repair the fences are now in comparison to the time before the Americans occupied these Islands?

A. No; only as a judge of those things I can tell in what kind of shape they are in and how long they were built.

Q. There is a wagon road called the Baguio & Dagupan road which runs through that land, is there not?

A. Yes.

Q. And the points where said road enters the land claimed by Mateo Cariño and where it leaves the land claimed by Mateo is open?

A. Oh, yes.

Q. Which of course, would permit cattle to escape from that land?

A. Yes; that wouldn't interfere in any way with the intent of the boundary—I personally could see what the boundary was intended to be.

Q. If Sioco in your judgment, made any error in pointing out what he supposed to be the boundaries as compared with what would ordinarily appear to be natural boundaries, he erred in claiming less land than would be described by the natural boundaries, did he not?

A. Hardly; I don't think Sioco made any error—he understands them thoroughly about right position, and I think he went around—you didn't put the question right if I may be allowed; what he did do, he pointed out boundaries that included less land than I would naturally have supposed Mateo to have owned. With regard to these natural boundaries we are somewhat mixed up; I would like to explain here—where the Baguio & Dagupan road leaves the southern side of this land there is an old stone wall which I thought likely to be the boundary between Mateo Cariño and Mateo Corantes of Lauacan, which runs up from the ridge to an impassable cliff on the eastern side, but the line that was pointed out to me ran up through a ravine where there is nothing to show its location except a short piece of old sod fence near the top. The natural boundary would have been up through this ravine which is a dry run and everything can pass through; the wall is probably 100 years old; cattle could roam across any part of that boundary. This is a fairly well defined fence—cattle could go around it. This old fence is not cattle proof but the cattle were prevented from going along down the ridge by another fence located some distance further south toward Lauacan. The eastern boundary from a point about 200 meters north-east of the Baguio Dagupan road is poorly defined for a distance of about 2000 meters to the point of the corner of the land located furtherest north.

Q. Referring to Exhibit "B" and the north-eastern boundaries of the land described in said plat, state whether or not there is not the remains of an old gate within the vicinity of the point indicated on said plat as a sod fence on said eastern boundary?

A. Yes; there is.

Q. Hasn't it the indications of being rather old—ancient?
A. It is a matter of 40 years old—the fence is good though—you can't knock down one of these fences.
171 Q. Are there not around there upright posts with holes in, which would indicate the remains of a gate?
A. The gate is there and in good order—the gate which was built to keep cattle from going into the Ipit river—the other ridges which they could not roam down, he did not bother to fence.
Q. From your observation of the lines of said land and from your knowledge of the customs of the Igorrotes, would the artificial work made on the various points of said lines indicate that the owner thereof attempted to make boundaries to a tract of land?
A. Why yes; I should say that that Igorrote had fairly well defined his lines except in the vicinity of the saw-mill and I do not think that he intended to go across the tops of those hills; I think that he intended that river up there to be the boundary up to about the point that that Igorrote here before testified to—nearly to that road or about to that point, as there are remains of what has likely been, years and years ago, a fence, almost washed out down to there and I think the river was intended to be the boundary and it coincides with what that Igorrote testified to.

COURT: Indicate the point that you have marked with your finger on Exhibit "B" by its bearing and distances from the initial point of that survey—approximately its distance and its bearing.

A. At a point on the Lubas river about 75 degrees west and 80 meters distant from the point of beginning.

Redirect examination.

BASSETT:

Q. In reply to the questions asked by Mr. Haussermann you stated that you did not make a survey of the land pointed out to you by Sioco and Mr. Clarke did you not?
172 A. When I say survey I mean that I did not go over it with the accuracy that I would go over it if I were going to make a map for record.
Q. Did you go over it with sufficient accuracy to determine whether the land described in the petition and plotted by Mr. Davies was the land pointed out to you as the land claimed by Mateo?
A. I think I went over it carefully enough to establish that fact.
Q. And what was the result of your investigation?

Mr. HAUSSERMANN: We object to that question for the reason that it calls for the conclusion of a witness based upon an admitted incomplete survey of the land in question.
COURT: Objection overruled.
Mr. HAUSSERMANN: Exception.

A. That the lines as put in the description and as plotted on the map do not coincide with the boundary as I think it is on the ground.

Q. Was Mr. Clarke with the party at the time you made your investigation?

A. Part of the time.

Q. Did he indicate to you the starting point as he remembered it?

A. Why yes, I believe he did but he wouldn't guarantee it until he got Sioco with us—he got Sioco to come and show me just where it was.

Q. And Mr. Clarke told you he was with D. Picton Davies at the time the survey was made?

Mr. HAUSSERMANN: Objected to as leading.

173 COURT: Objection sustained.

Q. Did Mr. Clarke or did he not tell you that he was with Mr. Davies at the time the survey was made?

Mr. HAUSSERMANN: Objected to as leading.

COURT: Objection sustained.

Q. Did Mr. Clarke say anything to you at all in reference to the survey of Mr. Davies?

A. Yes; he said he was with him at the time it was made.

Q. Did he tell you whether or not he took any part in the survey?

A. He told me he assisted in the measurement of it.

Q. Do the lines that are described in the petition and plotted on the map filed in this case correspond with the lines that were pointed out to you by Sioco on the day that you, in company with Clarke, Sioco and others made your investigation?

A. To the best of my judgment, they do not.

Q. Did you find any monument, or was any monument pointed out to you by Sioco which was put there by Mr. Davies in making his survey?

A. Yes.

Q. Where was that monument?

A. Located on the west side of the property at the point where the line turns and runs in a north easterly direction.

Q. Will you describe that point with reference to the buildings on the military reservation as shown by defendant's exhibit "B"?

A. It lies in the direction north-east from the buildings and about 20 ft. west of a large pine tree that is blazed—said pine tree is located on the top of the west bank of the brook which is the head waters of the Ipit river.

174 Q. Now, Mr. Hayward, if the Ipit river at that point is the boundary of Mateo's land would Mateo, if he should succeed in registering the title for which he has applied, acquire land other than that bounded by the Ipit river on the west?

A. He would.

Q. Mr. Hayward, if the land to the west of the Ipit river at that point belonged to the military, and if the Ipit river at that point was their place for getting water for use on the reservation, would

it be possible to get to the river without passing over land which if† would have been registered ∧ [is]* this land is registered?

Mr. HAUSSERMANN: Objected to as immaterial.
COURT: Objection sustained.
Mr. BASSETT: Exception.

Q. From the monument to which you have just referred would it be possible to run any boundary lines without including land other than land bounded on the west of the head waters of the Ipit river?

A. No.

Q. What kind of a monument is that monument?

A. It is a natural stone that they have found there that has been set in the ground and marked with a cross on the top of it. It is of irregular shape about six inches square approximately and 12 to 14 inches long and set about 5 inches in the ground—it is of the same quality as the ordinary boulders as found around this country.

Q. You observed, did you not, the Lubas river and the Ipit river in your investigation?

A. Yes.

Q. You have read the description of the land filed with the petition in this case, have you not?

A. Yes.

175 Q. You have studied *tha* map, Applicant's Exhibit "A" in this case, have you not?

A. Yes.

Q. Is it possible for the land described in that petition and plotted in that map to have as a boundary, the Lubas river on the north, head waters of the Ipit river on the west and the Lubas river near the road on the west?

A. No; because the line as run and plotted does not coincide with the courses of those rivers.

Q. Mr. Hayward, did you find any earth fences or stone fences on this land other than those shown by you on defendant's Exhibit "B"?

A. Yes; there were several other disconnected fences running across the land in different directions.

Q. Is there not one fence, which by connecting with a ravine or creek, crosses the land?

A. Not entirely clear across it; no.

Q. Where were the fences within the land that were not used as boundaries?

A. In the northern end of the land there were some short pieces of fence that was evidently made of stone, very old, and pretty well fallen down now—they are segments of circles that walls were evidently built to separate small sections of the land used for garden purposes from the larger pasture land located in the northern end

[*Word enclosed in brackets erased in copy.]
[†In pencil in copy.]

of the property—all within 250 meters of the northern boundary of the land and 300 meters of the western boundary, practically locating those walls in what would be the north-western corner of the property.

Q. At what other place did you find a fence?

A. At approximately 600 meters from the north-eastern end line of the property beginning at the cliff on the eastern side are
176 the remains of an old fence made both of stone and sod which runs to the west, then turns to the north and continues within about 150 meters of the western side line of the property claimed.

Q. Where is the east end of that fence located, Mr. Hayward?

A. At the edge of the cliff where the land slopes toward the Ipit river.

Q. Is there a ravine or a creek near the western end of that fence?

A. A branch of that creek—no, there is no branch there either—no, I don't think that creek is within at least 150 meters of the eastern end of that wall.

Q. Did you observe that carefully?

A. Yes; I went all over it.

Q. Is this fence, which you have just described a segment of a circle as the other fences were which you have just spoken of?

A. No; it is not—it is irregular in its direction, running first, in a westerly direction, turning them a little to the south, then turns and runs almost north; the reason that fence was built that way was, because in different parts of this land there seems to be an outcrop of the ledge and there would be a series of large stone, and whoever built the wall took advantage of those conditions to save themselves wall building by connecting those pieces of out-cropping ledge.

Q. That is the reason of great irregularity of many of those fences?

A. Yes.

Q. What is the condition of the land as to elevation due south of the fence you have just indicated?

A. The land there is sort of a saddle the water shed line between this Lubas river and the Ipit river it runs over the ridge—that is the dividing line between the water sheds, and at this point,
177 as I say, there is a saddle in the ridge.

Q. What appears to be the age of that fence?

A. That is hard to judge compared to the sod fences, but I would be willing to say it must be at least 100 years old.

Q. Is it not a fact that on your first visit to the ground that you saw this fence?

A. Yes.

Q. At that time, what did you think was the purpose of the fence?

A. Being about the only fence I had seen going up that line I thought it must be the line of the property. That point Mr. Clarke informed us was not.

Q. You spoke yesterday, Mr. Hayward about a gate on the eastern boundary—what is this cut constructed of?

A. Two posts set one each side of a gap in the sod fence—in this post three or four holes are bored in which to put the bars.

Q. Are these posts rotten?

A. No wooden post will last a generation around here—they are still standing there.

Q. You testified yesterday that they must have been 50 years old.

A. The gate was 50 years old—the fence has been there that long but the bars have actually got to be replaced from time to time.

Q. Well, these posts have not been there for 50 years have they?

A. I don't think any posts have been there for fifty years because no timber around here would stand that length of time and those posts were still standing, so naturally they must have been replaced.

Q. How long, in your estimation, Mr. Hayward, knowing the conditions of this country, the amount of rain fallen each year, and the volume of water which falls, would an earthen fence exist?

178 A. Very likely take 1000 years to wipe out all signs of it but it will exist in different states of repair an indefinite period—if it hasn't been repaired for 30 years, naturally there would be some places washed off and fallen away but how long it would stay in existence, I suppose you would find traces of it for 1000 years—it would take a long while to wipe out all the remains of such a fence—in fact, a stone wall would disappear as soon as a sod-fence, only it would fall down and gradually sink into the earth and be grown over with grass where a sod fence would collapse and it would take years and years for it to flatten out.

Q. How long, in your estimation, would it take the fences which you have said you thought must be 100 years old and one you thought was 50 years to have gotten in their present stage?

A. As I say, the 100 years of existence has put that in that condition—the reason I judge that that is 100 years old is because out of the top of it there are three pine trees that are 15 or 18 inches in diameter and naturally they have been there a long while.

Q. Is that the fence where the gate is?

A. No.

Q. We are talking about the fence where the gate is.

A. I understood that you were speaking about all of it.

Q. I am speaking about the fence which is 100 years old. I thought you said the gate where the fence was, was 100 years old.

A. No; I said that was about 50 years old.

Q. Mr. Hayward, without any repairs having been made to these fences, how long would it take them to get in their present condition?

A. It is the present condition that I judge by—that it has taken 50 years or so to put that fence in that condition—whereas, that fence must have been put there 100 years having those trees grown there. The fence at the head of the dry run on the south-

179 east side of the land I judge to be at least 100 years old because of the size of the trees that are growing out of the top of it and it has been more or less leveled to the general surface of the land—the fence that runs over a ridge that runs toward the Ipit river, said ridge located about 250 meters from the north-eastern end

of the land I think at least 50 years old, judging from its present condition and the general growth of shrubbery over and around it.

Q. And now about the fence due east of the military post?

A. The fence due east of the military post must be at least a generation old.

COURT: What do you call a generation?

A. Thirty years.

Q. So then, in your estimation, the three fences of which you have just spoken could not have been built at the same time?

A. No; I do not think they were.

Q. The long sod fence, according to your estimation due east of the military reservation must have been constructed 70 years after the fence near the head waters of the river that crosses the road?

A. No doubt it was.

Q. In your estimation, which one of these three fences would be the most beneficial or most useful in keeping cattle on the land in question?

A. Why all 3 of them keep cattle on the land at different points. The fence which would keep cattle off the land, well, of most benefit to the cattle, that is the best grazing land, would be the long fence east of the post quarters.

Q. If cattle should go over the fence near the head waters of the stream that crosses the road, it would be necessary for them to go up a steep hill, would it not?

A. No; they can go along the side of the cliff.

Q. There is a cliff there, is there not?

180 A. That old fence is on the top of the main ridge which is the dividing line between the water sheds of the Ipit and Bud river-.

Q. Now, is it not a fact, that over that water shed, toward Lauacan, in a very short distance there is an elevation of as much as 150 or 200 feet.

A. If you go over the highest point of that ridge, yes.

Q. If you should go around it, you would be on a very steep hill would you not?

A. There is a trail you go up—may be 100 feet high in going up that trail.

Q. If cattle should stray through the ground that is bounded by the short sod fence of the eastern boundary toward the northeast part of the land, is it not a fact that it would be necessary for them to go down a very steep hill?

A. Yes.

Q. Then, in your estimation, is not the long sod fence due east of the military post the most necessary fence for enclosing this land for the purpose of grazing?

A. Undoubtedly.

Q. And without that fence would this particular land be enclosed?

A. It would not be enclosed on that side.

Recross-examination.

Mr. HAUSSERMANN:

Q. Referring to the fence referred to by Counsel for the Government as being the fence most necessary to keep in cattle—isn't it a fact that on the side of the fence which is not claimed as part of Mateo's land, there is good grazing land?

A. Yes; well, no; comparatively it is, when compared to the others.

Q. Then, from your ordinary experience and judgment
181 and from habits of cattle, don't you think that that fence would be the one that the cattle would most likely take to go over?

A. Undoubtedly.

Q. Isn't that the fence that under ordinary circumstances would have to be watched more closely than others and kept in better state of repair?

A. Surely; I simply can tell how long it must have been there in the state it was found—it might have been kept in repair for years before, but at the time, it looks as if it had been there the stated number of years.

Q. And of course you have no way of telling or judging as to how many years back of the 30 years it had been placed there?

A. No; I couldn't tell that.

Q. But that which you did see must have been there at least 30 years in your judgment?

A. Yes; to get in that poor state of repair.

Q. The fence which you referred to in your examination as being in your opinion, as much as 100 years old—is that one of the fences that was pointed out as a boundary fence?

A. Yes.

Q. Is the same true to the one that you referred to as being 50 years of age?

A. Yes.

Q. Referring to the fence described by you as being irregular, within the boundaries, state whether or not that fence may have been a portion of the fence around a camote patch?

A. It may have been.

Mr. G. C. SMITH, being first duly sworn, testified as follows:

Mr. BASSETT:

182 Q. What is your name?

A. Gilbert C. Smith.

Q. Where do you live, Mr. Smith?

A. I live at the present time at Baguio on the military post which is the sub-post of Camp Wallace; I am a first Lieutenant in the second Cavalry.

Q. Where is this post situated?

A. This post is located—I should say Southeast of Baguio.

Q. What is your position, your official position at present, Mr. Smith?

A. At the present time I am commanding a detachment of the 12th Company, Philippine Scouts.

Q. And you are in charge of the reservation of the Post at Baguio?

A. I am, sir.

Q. Are you familiar with the boundaries of the military reservation at Baguio?

A. I am, sir.

Q. Are you familiar with the boundaries of the land claimed by Mateo Cariño in this action and plotted in the plaintiff's Exhibit "A"?

A. I will state that I am familiar with all the land as bounded by the lines of the military reservation.

Q. At what point on the Baguio & Dagupan road going from Baguio to Dagupan does the military reservation begin?

A. You mean the point going toward Lauacan do you not—the extreme point of the reservation going toward Lauacan?

Q. No; the point nearest Baguio on the Baguio & Dagupan road.

A. The corner stone of the military reservation land nearest Baguio is a short distance from the hill where it is said that they are going to build a house for the Governor—that is as near
183 as I can describe it.

Q. Do you know the distance from Baguio on the Baguio & Dagupan road to that point approximately?

A. About 700 yards.

Q. Which side of the road is the corner?

A. Left side.

Q. How far from the highway?

A. About 20 ft. from the high-way; I can describe that more fully but I thought that probably it would be understood better in that way.

Q. What is the map, Defendant's Exhibit "C" that I now show you?

A. This map was made by Henry C. Jewett, second Lieutenant, corps of Engineers, U. S. A. and it shows the boundary lines of the military reservation at or near Baguio.

Q. Have you familiarized yourself with the boundaries of this reservation at Baguio?

A. I have.

Q. Have you found the monuments that were placed there by Mr. Jewett?

A. I have found all the monuments except one—about one.

Q. What monument on the map have you been unable to find?

A. The monument I have been unable to find, on the map, is the one 2305 feet from the second monument along the Baguio & Dagupan road going toward Dagupan—southeast corner of the reservation. I have no doubt the monument is there—in fact, I know it is there although I have not found it—I am sure I can find it.

Q. Do you know the name of the river marked on this map, one?

A. I do not know the names of any rivers on this map as the names are not shown in the map.

Q. Do you know where the saw-mill that is near the Baguio & Dagupan road is located with reference to this map?

184 A. I do.

Q. Where is it?

A. It is located starting from the first monument that I speak of or that I was questioned about and going toward Dagupan you get streams†
to a bridge where two [steams]* are united—that is, they meet just before they get under this bridge—the junction of these two stream-stream†
form, I should say, another [steam]* which runs, as I said before, under the bridge and down out of the military reservation about three or four hundred yards where this stream is dammed. At that point you will find the saw-mill known as Wagner's saw-mill as I have heard it said.

Q. Now, is not the saw mill, to which you have just referred, located on the stream as shown in the defendant's Exhibit "C" marked One?

A. Yes, sir; it is.

Q. Are you familiar with the sod fence running north and south which is located a short distance east of the military post?

A. Yes; I am—this fence is just back of the stables on the reservation.

Q. On the reservation?

A. Yes, sir.

Q. Can you indicate on this map, defendant's Exhibit "C," by referring to the streams thereon marked One and Three, where that fence runs?

A. That fence runs—beginning at the northern point of the fence, it runs, as I said before, along back of the stables on the reservation taking a southerly direction and goes on down just above the point of this stream marked One on this map and runs along the left bank of that stream and finally comes right down to the stream at the point where that water is and stops at that point. I will state that there are two little rivers shown on his map
185 and if I were to sketch the fence on this map the fence would necessarily have to cross those rivers, but in reality the fence does not cross those—in other words, he has gotten these rivers there on the map which may exist at times but do not at the present time; they may exist during the rainy season but do not at the present time. I mean to convey, by what I said, that I want to show that if you were to run a fence from the northern point that I have described, down past the stable as I said before, that that fence would not cross this stream marked One on this map which goes right around the point and comes down and finally runs into the stream on left hand side.

[*Word enclosed in brackets erased in copy.]
[†In pencil in copy.]

Q. That is the same stream on which the saw mill is located further down, is it not?

A. I wouldn't say that it is—it might be but I wouldn't say myself that it is—as I said before, this stream joins another stream just above the bridge and that stream which is formed by the conjunction of these streams may be the stream, and it may not be.

Q. What is the nature of the land along which the eastern boundary of the reservation runs with regard to being level or hilly?

A. It is very rough, as it is on the eastern side of a divide that runs along that section of the country.

Q. Do you know where an old sod fence with trees growing out of it is located near the south-east corner of the reservation?

A. I do.

Q. Is that fence within the reservation?

A. No; that fence is not in the reservation.

Q. How far east of the reservation land would you estimate that fence to be?

A. I couldn't very well estimate that distance for the reason that I do not know where the monument dividing the reservation
186 land at that point is. I have not been able so far, to find this monument, as I stated before.

Q. If that monument is located 2305 feet due east of the monument nearest Dagupan on the Baguio & Dagupan road, in your estimation, how far would this sod fence be removed from the eastern boundary of the reservation?

A. A very short distance, as I said before, but I am not able to estimate that distance.

Q. By looking at the map and studying the contours and the rivers, are you not certain that the sod fence just referred to is very near to the boundary of the military reservation?

A. I am.

Q. Referring to defendant's exhibit "B"—can you indicate what part of the land enclosed therein is within the boundary of the military reservation?

A. All of the land in defendant's exhibit "B" is in the military reservation except the southern part and the southeastern part of the land shown on this exhibit.

Q. You referred to the south part—what do you mean?

A. I mean the southern part of the land on this exhibit.

Q. What would you take as a boundary in describing the south part—what would you take as the northern boundary of the south part?

A. The witness indicates all of that portion of the land shown upon defendant's exhibit "B" and lying north and northeast of the road marked Baguio & Dagupan road with the exception of a very small portion of what is represented as the eastern line of the tract on defendant's exhibit "B," and a segment cut off from the north end of said tract, exhibit "B," which segment is indicated by two marks made by the witness as the northern boundary of the military reservation on that portion of that land which the court directs shall be marked "X" and "Z" respectively on this map.

187 —. Where those marks are placed I will state that I cannot mark them in the places where they should be but I will mark them if the court asks me to. I will state that in my best judgment these marks, X and Z shown on this exhibit are only approximations.

Q. Have you ridden over that part of the military reservation which is included in defendant's exhibit "B"?

A. Yes; not only over that but over all of the military reservation.

Q. In your opinion, is the land shown in defendant's exhibit "B" enclosed?

A. It is not.

Q. Are there any indications that it has ever been enclosed?

A. There are a few fences here and there but I would not state that these fences have been put at these various points for the purpose of enclosing the land in this exhibit.

Q. What was your business before you went into the Army?

A. I was in the cattle business.

Q. In your opinion, if the sod fences which are indicated on defendant's exhibit "B" were all in good repair so it would be impossible for cattle to pass them, would the land shown in defendant's exhibit B be what is considered cattle proof.

Mr. HAUSSERMANN: Objected to as incompetent and immaterial.

COURT: Objection sustained.

Mr. BASSETT: Exception.

Q. How long have you been in the cattle business, Mr. Smith, before you entered the army?

A. About seven years at one time; and another off and on for a great many years.

Q. Are you familiar with the habits of cattle?

188 A. Very.

Q. In your opinion, are the fences indicated on defendant's exhibit "B" taken with the natural obstacles connecting or joining said sod fences, assuming that the artificial fencing is in a good state of repair, sufficient to turn cattle?

A. If the artificial boundaries were in the best state of repair they could not possibly turn cattle, for I, on a native pony, can ride over any part of the land—the natural boundaries in my judgment would not be such as to turn cattle.

Q. Can you state, Lieutenant, the elevation of the highest point of the reservation contained within the land bounded as shown in defendant's exhibit "B" above the point on the Baguio and Dagupan road at the monument nearest Dagupan?

Mr. HAUSSERMANN: Objected to as immaterial and not within the issues of the case and does not tend directly or indirectly to prove a title to the land.

COURT: The court admits the answering of this question and overruled the objection for the sole purpose of testing the witness's familiarity of the tract of land about which he is testifying and for no other purpose.

COURT: Witness, do you know the elevation?

A. I do not know the elevation—I know the elevation of the land embraced in the military reservation as shown by Lieutenant Jewett's map.

Q. Is your knowledge of the elevations obtained from the marks and figures of the exhibit verified by your own judgment?

A. Yes.

Q. Have you any other knowledge of it or anything else upon which to base an opinion?

189 A. I have no other; no, sir.

Q. Who is in possession of the land contained within the military reservation?

Mr. HAUSSERMANN: Objected to as calling for a conclusion.

COURT: Objection overruled.

A. The Government of the United States is in possession of the land.

Q. You live on the military reservation, do you not?

A. I do.

Q. Have you soldiers on that reservation?

A. I have fifteen soldiers.

Q. And do you make it a point to ride over the reservation to see that everything is in proper condition?

Mr. HAUSSERMANN: Objected to as leading and immaterial and incompetent.

COURT: Objection sustained.

Q. How often do you ride over the reservation, if you ride at all?

Mr. HAUSSERMANN: Objected to as immaterial.

COURT: Objection overruled. For the purpose of showing witness's familiarity with the section of the country testimony is admitted and for no other reason.

A. I ride over the reservation very often.

Q. For what purpose?

A. For the purpose of keeping squatters off the reservation and allowing no timber to be cut.

190 COURT: In pursuance of military orders?

A. Yes, sir.

Cross-examination:

Q. When did this become a military reservation?

A. I do not know, but the order of this subject will show it.

Mr. BASSETT: We object to witnes testifying from the record your Honor, because the record is the best evidence.

COURT: Objection sustained so far as relative to his testifying from the record, but the Court rules that the witness may take the record to refresh his recollection.

COURT: Do you desire to avail yourself of the privilege of taking the record or any other document for the purpose of refreshing your recollection?

A. I desire to avail myself of the oreder referred to.

COURT: Have you a copy of that order?
A. Yes, sir.
COURT: Refer to it.

Mr. BASSETT: I object to the answer as not being the best evidence since the order itself, the original order issued, is the best evidence—no evidence has been introduced showing that the original order is not available and no ground having been laid for secondary evidence.
COURT: Objection overruled.

A. I know of my own knowledge, from this order, that that became a military reservation at the time this order states that it did.

191 COURT: The answer is stricken out as not responsive to the question.

Q. Is that the only answer you can make to the question submitted to you as to the time when this land became a military reservation?
A. I have also a copy of a telegram which shows when troops first took station on this reservation.
Q. I will ask you again—can you state now, when the property described by you as a military reservation became a reservation?
A. As I stated before, I can do so by referring to this Order.
Q. Taking said Order referred to, by you, for the purpose of refreshing your recollection, can you then state when said land became a military reservation?
A. I can state when it became a military reservation from the facts contained in that order.
Q. Will you now state when that land became a military reservation?

Mr. BASSETT: Objected to because he says that he is not testifying from his own personal knowledge.
COURT: It is very clear to the Court that this witness understands the question.

A. I know from my own knowledge from this order as I stated before.
COURT: You have no other knowledge, is that a fact?
A. That is a fact, except what I stated about the copy of a certain telegram.
Q. Mr. Smith, do you know when that land was made a military reservation, and I desire a direct answer.
A. I know when that land was made a military reservation by this Order.
192 COURT: Answer the question—yes, or no*t*—that is the order of this Court.
A. Yes.
Q. When?
A. When this order was promulgated.
Q. When was the order promulgated?
A. This order is General Order No. 48 dated War Department, November 3rd, 1903.

Q. Is that when it was promulgated?
A. Yes, sir.
Q. What was the character of your experience as cattle man?
A. My experience as a cattle man was extensive and varied.
Q. What was the nature of your experience?
A. I do not understand that question.
Q. Did your experience as a cattle man confine — the killing cattle?
A. Confined to killing cattle?
Q. Yes.
A. Caring for cattle, herding cattle, rounding up cattle, contracting in the cattle business and in many other ways.
Q. Where did you have that experience?
A. In the territory of Arizona.
Q. Will you explain more fully what you mean by "herding of cattle"?
A. There are many ways of herding cattle.
Q. I am asking you what you meant when you said you herded cattle?
A. I intend to answer the question as I wish—I will finish the question my own way—I don't need anything from you—there are many ways of herding cattle—herding them in common as was expressed just now—herding them in the plains and other ways of herding.

Q. Now, will you kindly explain to the Court the ex-
193 perience that you had in herding cattle—the kind of herding that you referred to as your experience?

A. I have herded cattle from the gulf of California—in the state of Senora, Mexico to Tucson, Arizona on the S. P. Railroad where they were shipped to northern parts—that is what I mean by herding cattle.
Q. How long have you been in the Philippines?
A. This is my second tour in the Philippines.
Q. How long have you been in the Philippines this time?
A. I have been here now since the 18th of February, I think.
Q. Present year.
A. Yes, sir; our regiment came in on the Transport Kilpatrick—I have forgotten the exact date when we arrived.
Q. How long have you been in Benguet Province?
A. I have been in Benguet province since the 27th of February, I think.
Q. 1904?
A. Yes, sir; this year.
Q. And had you been in Benguet province before that time on your other tour?
A. No, sir; I had not.
Q. When you gave your opinion or judgment as to the efficacy of the fences and natural boundaries surrounding the land claimed by Mateo Cariño in turning cattle, did you base that judgment upon your experience with cattle in the United States?
A. No, sir; I did not.

Q. Upon what did you base your judgment?
A. I based my judgment upon what I knew of the cattle business.
Q. In the United States?
A. In any part of the country or world.
Q. And you had no other experience with cattle, only such
194 as you had with cattle in the United States, is that true?
A. I have had no other.

Redirect examination.

Mr. BASSETT:

Q. You have had an opportunity to observe, Mr. Smith, have you not, cattle on this province?
A. Yes, I have.
Q. Is it not a fact that cattle have been grazing over the military reservation since you came here?
A. There are ponies and carabaos grazing on the reservation.

Recross examination.

Mr. HAUSSERMANN:

Q. To whom do they belong?
A. I do not know.
Q. Is *is* a fact that carabaos and cattle are grazing upon land considered as military reservation—is that true?
A. There are not grazing there continually, but they get out odd times, when I make it my business to drive them off.

Mr. BASSETT: I would like to offer in evidence, your Honor, defendant's exhibit "B", defendant's exhibit "C" and a paper I have here marked for identification defendant's exhibit "D".

Mr. HAUSSERMANN: I object to the exhibit "D" for the reason that the same is incompetent.

Mr. BASSETT: I shall ask the privilege of taking depositions of Acting Chief of the Bureau of Archives and Acting Chief of the Bureau of Public Lands.

195 Exhibits B. & C. are admitted; exhibit D is withdrawn.

Mr. BASSETT: I offer the following motions which are now filed with the Clerk for the purpose of dismissal of this case for the reason stated in said motion, namely the fact of jurisdiction on the part of this court and the court of Land Registration to hear, try and determine the issues presented in this case.

The motion having been duly argued by Counsel, is overruled by the Court at the present time.

Mr. BASSETT: We offer the contract between Mr. Clarke and Mateo Cariño the applicant in this case, by which applicant gave to Mr. Clarke an option on the land, the registration title to which the petitioner has petitioned in this case.

I should also like to offer, your Honor, a letter which is part of the original record written to J. H. Wilson, Clerk of the Court of Land Registration and signed by Wm. F. Pack, Provincial Governor of Baguio, dated September 11th, 1903.

Mr. HAUSSERMANN: Objected to that as incompetent.

COURT: Objection sustained.

Mr. BASSETT: If your Honor please, we now want to offer in evidence the testimony taken in the court below, of Governor Wm. F. Pack found between pages 65 and 74 inclusive of the record of the Court below.

COURT: The letter just excluded by the court on the ground of its being incompetent, forming a portion of the subject matter in the examination in the court below of the witness Wm. F. Pack, the letter forming a part and being made the subject matter of examination in the testimony of Wm. F. Pack in the court below which has
now been offered by the Counsel for the Government, and no
196 objection being offered by Counsel for the applicant to the introduction of said testimony and all of it, the court now rules that the Counsel is not entitled to his objection to the introduction of the letter, he having made no objection to the competency of the testimony of thr witness Pack, and the document is admitted as a portion of William F. Pack's testimony and will be marked as an exhibit.

——: With the exception of the further testimony of Mr. Hayward and depositions that we desire to take, and renewing my request that the court visit the property in company with the attorneys and the parties in interest and the Engineer, the Government will rest its case.

All the testimony taken in the Court below on behalf of both the claimant and the government, which under the ruling providing for the use of such testimony in the Court of First Instance, subject to objections for competency, etc., is not completely introduced so far as presented in the Court of Land Registration, by both parties, with the exception of the witness Esteban Emilo found on page 46 to page 50 inclusive, which said testimony forms no part of the evidence presented and received in this court and this note is made in the record to avoid all question in reference to the admission or excludable parts or portions of the record of the court below, by this court.

Mr. HAUSSERMANN: I desire to offer in evidence the contract, agreement and deed executed by one Otto Shearer and Mr. Wood, formerly, the local manager of the Manila branch of the firm of Smith Bell & Co., conveying to the Government of the Philippine Islands, certains tracts of land within the vicinity of the land in disagreement in this action purchased in pursuant and by authority of Act No. 279 of the Civil Commission.

Mr. BASSETT: I object to the introduction of these [dees]* deeds†
197 and contracts on the ground that they are irrelevant, immaterial and incompetent to prove any issue in this case.

[*Word enclosed in brackets erased in copy.]
[†In pencil in copy.]

Mr. HAYWARD recalled for further examination.

COURT:

Q. Mr. Hayward, have you made the computations and prepared the statement or plat showing facts and figures in reference to the areas of these several surveys and other data requested by the Court?
A. Yes.
Q. Will you produce the plan?

(Witness produces plan which is handed to the reporter and marked by the order of the court for identification Exhibit "O.")

Q. You may state, Mr. Hayward, whether the facts and figures and representations made upon the map and noted thereon are correct so far as it is possible to make them so from the data in your possession.
A. Yes, that is the case—I have looked over the data, both my own and Mr. Davies's and both plans are correct as far as I can see.
Q. And the other matters thereon represented are in accordance with the conditions as you found them from personal examination and careful inspection of the entire area included in the land represented?
A. Yes, sir.
COURT to the Attorneys: Do either of you object to the admission of the plan and map that has been prepared by the request of the Court?
198 Counsel have no objection. It will be admitted as part of the evidence.
COURT: Now, gentlemen, you have the right to cross-examination upon the map if you desire, or anything represented thereon.
No question by the plaintiff.

Mr. BASSETT:

Q. You have indicated, have you not, Mr. Hayward, by the different colored lines, the relative location of the different surveys?
A. Yes.
Q. And you have made in your notes, references which show to which survey several lines refer?
A. Yes.
Q. And you have made in your notes, references which show to which survey several lines refer?
A. Yes; indicated by different colors.

The following maps and documents were admitted in evidence in the course of the above proceedings:

199 PLAINTIFF'S EXHIBIT A.

(Here follows map marked page 200.)

201 APPLICANT'S EXHIBIT "Q."

Inspection General of Forests of the Philippines. District of Luzon—case 138—year 1886—section Laguna—Province Laguna—town of Pila—Party in interest Bernardino Aquillas—Expediente *in re* composition of lands—result—begun on August 6, 1882—terminated 13th February, 1886—The Assistant of Laguna transmits an expediente which contains—1st: the application of Bernardino Aquillas, dated 6th August, 1882—petition for the composition of 2 parcels of land which he possesses in the town of Pila—2: The Act of 27th January, 1886—the proceedings of the 12th August, 1884—there were no protests—the parcels are located in the sitio of San Antonio and comprise 3 kilometers under cultivation—the first is bounded on the north by the property of Juana Alava and Petra Ramones; on the east by the property of Luis Rivera and the highway Calauang; on the south by the highway and the property of Juana Alava; and on the west by the property of Juana Alava. The second is bounded on the north by the highway Calauang and property of Victoriano Alavat; on the east by the property of the said Alavat and Antonio Esquerra; on the south by the property of Juana Agra; and on the west by the same and the highway leading to Calauang—possession by inheritance—held by his predecessors for more than 30 years—3rd: map on a scale of 1:2500—4th: Report—land of superior quality cultivated in palay—assessed at 12 pesos per hectare—area 1.1139 hectares—assessed at 13.36 pesos—March 2, 1886—No. 119—transmitted information to the Inspection General proposing the free composition in accordance with Article 5th—the assessed valuation amounting to 15 pesos a hectare, which with the 1.1139 hectares, will be worth 16.71 pesos—Inspection General

March 2, 1886—No. 339—Most illustrious Sir: I have the
202 honor to transmit to your excellency 8 expedientes *re* composition of lands in Pila (Laguna) prepared by Ayud. of the section, and applications of the individuals named on the back—may God, etc.—remitting information 8 expedientes of composition of lands in Pila (Laguna) Juan Fajardo—Francisco Ruiz—Alejandro S. Juan—Andres Malubay—Maria Gravato—Juan Agra—Teodorica Natiola—Bernardino Aquilles—and cultivated almost in its entirety—118—more than 30 years—Act—Article 5th—assessment reaching 15 pesos the 1.1139 hectares valued at 16.71 pesos.

DEPARTMENT OF THE INTERIOR,
BUREAU OF PUBLIC LANDS, MANILA.

I certify that what is contained in the foregoing page is a literal copy of the expediente in the matter of the composition of lands located in the sitio of San Antonio in the jurisdiction of the town of Pila (Laguna) applied for by Don Bernardino Aquillas, the cession of which does not appear in the expediente referred to.

This is given at the request of Mr. John W. Haussermann at Manila, June 7, 1904.

P. S. BLACK,
Acting Chief, Office of Public Lands.

Indorsement: NOTE.—I certify that this 25th day of July, 1904, at 10 o'clock A. M. there was received at this office by mail in my care the foregoing document. William M. Brower, Clerk.

203 APPLICANT'S EXHIBIT R.

23RD OCTOBER, 1885.

The Assistant of Laguna remits an expediente which contains: 1—application of Ygnacio Alava of 3rd August, 1882, applying for the composition of three parcels of land which he possesses in the town of Pila—2—certifications—2—Act of 19th October, 1885—proceedings 10th July, 1884—there were no protests—parcels are located in the sitio of Banca Banca—4 kilometers under cultivation—the first is bounded on the north by the property of Maria Malilon; on the east by the property of Juan del Rio; on the south by the highway to Calauang; and on the west by the property of Vicenta Villarico—the second is bounded on the north by the highway to Calauang and property of Ygnacio del Rio; on the east by property of Juan Alava; on the south by property of Luis Napoles; and on the west by a narrow lane—possession by inheritance and by purchase from his predecessors, and more than 40 years under cultivation—the interested party makes known that having become possessed of the second parcel subsequent to the presentation of his application, it was necessary to proceed to the publication by the crier (bandillo), and the adjoining owners consenting thereto the property was not newly measured—3—map on a scale of 1:2500—4—report—land of superior quality cultivated in sugar cane and corn—assessed at 12 pesos per hectare.

	Area.		Assessment.	
1st	1.1031	hects.	13.24	pesos
2nd	2.9679	"	35.61	"
Total	4.0710	"	48.85	"

November 10, 1885—1568—returned to the assistant for correction—December 2, 1885—transmitted corrected containing in the map and report the true area of the second parcel which is 2.9679 hects. The act has been noted and it has been observed in the for-†

204 report that the second parcel having been [be]* gotten by the interested party does not appear in his application and it has been measured upon his request—December 10, 1885—1743—information transmitted to the Inspection General proposing the free composition in accordance with Article 5th—December 12, 1885—The Inspection General returns the same to the Honorable asking†

the Assistant [to ask]* for explanation why the bandillos were pub-

[*Words enclosed in brackets erased in copy.]
[† In pencil in copy.]

lished after his circular of the 23rd March, last—(See expediente 1116)—December 19, 1885. 1783—returned to the Inspection General explaining the causes that obliged the assistant to act as he did. There is in the margin a note which says:—(See expediente 1116)—1311—more than 40 years—Article 5th—Assistant of the Laguna—November 1, 1885—No. 1568—the two parcels with which the expediente of composition of lands belonging to Ygnacio Alava in Pila is concerned are on the same scale and area according to what is set out in the plan and report is approximately the same, which is from all points of view impossible, since from a glance it will be seen that the area covered by the first parcel is much (word illegible) than that of the second; either the scale is erroneous in the first map

correctly

or its area has not been ∧ calculated—in order to enable you to arrive at the true area or the scale on which it has been drawn I return to you the expediente referred to. May God, etc.—[flourish.]*

205

DEPARTMENT OF THE INTERIOR,
BUREAU OF PUBLIC LANDS, MANILA.

I certify that what appears in the foregoing pages is a literal copy of the expediente in the matter of the composition of lands located in the sitio of Banca Banca in the town of Pila (Laguna) applied for by Don Ygnacio Alava, the cession of which does not appear in said expediente.

The interlineations "lo de vuelve" which are found in page one between lines 28 and 29 are [O. K.]* valid.†

I certify that this is given at the request of Mr. John W. Haussermann at Manila on the 7th of June, 1904.

P. S. BLACK,
Acting Chief, Office of Public Lands.

Indorsement on the above: NOTE.—I certify that this 25th day of July, 1904, at 11 o'clock A. M. the foregoing document was received at this office by mail. Wm. Brower, Clerk of the District of Tierras Altas.

206

APPLICANT'S EXHIBIT S.

13TH FEBRUARY, 1886.

The assistant of Laguna remits an expediente which contains:—1—the application of Basilio Alava of August 7, 1882—applying for the composition of 3 parcels of land which he possesses in the town of Pila—one certification—2—Act 26th January, 1886—proceedings 29th August, 1884—there were no protests—the parcels are located in the sitio of San Antonio 3 kilometers under cultivation.

The first is bounded on the north by property of Francisca Zorilla and Juana Alava; on the east by property of Juana Alava and the highway to Calauang; on the south by said highway and lands

[*Letters enclosed in brackets erased in copy.]
[†In pencil in copy.]

belonging to Apolonio de Castro; and on the west by lands belonging to Apolonio de Castro and Francisca Zorilla.

The second is bounded on the north by the lands of Jose Peñaranda and Pedro Aguillas; on the east by the lands of Pedro Aguillas; on the south by the same and a narrow lane; and on the west by a narrow lane and lands belonging to Jose Peñaranda. Possession by inheritance and for more than 30 years in the possession of himself and predecessors.

3—map on scale of 1:2500—4—report—land of superior quality cultivated in palay—assessed at 12 pesos a hectare—area 5.3813 hectares—assessment 64.58 pesos. February 25, 1886 (appears in the margin)—No. 299—report transmitted to the Inspection General proposing the free composition in accordance with Article 5—the assessment reaching 15 pesos per hectare which with 5.3813 hectares, will be worth 80.72 pesos—more than 30 years—Act—Article 5th—valuation amounting to 15 pesos, the 5.3813 hectares or 80.72 pesos.

207 DEPARTMENT OF THE INTERIOR,
BUREAU OF PUBLIC LANDS, MANILA.

I certify that what appears on the previous page is a literal copy of the expediente in the matter of the composition of lands located in the sitio of San Antonio in the jurisdiction of the town of Pila (Laguna) applied for by Don Basilio Alava the cession of which does not appear in said expediente.

The present is given at the request of Mr. John W. Haussermann at Manila on the 7th June, 1904.

P. S. BLACK,
Acting Chief, Office of Public Lands.

Indorsement on above: I hereby certify that this 20th day of July, 1904, at 11 o'clock A. M. there was received at this office by me the foregoing documents. W. M. Brower, Clerk of the Judicial District of Tierras Altas.

208 APPLICANT'S EXHIBIT T.

Inspection General of Forests in the Philippines, Middle District of Luzon—section of Laguna—Province of Laguna—town of Pila—expediente No. 55—insterested party Ygnacio Alava—in the matter of the composition of lands 1885—begun on August 3, 1882—August 31, 1885—The Assistant of Laguna transmits an expediente which contains:—1—Certifications of the application of Ygnacio Alava of August 3, 1882—applying for the composition of one parcel of land which he possesses in the town of Pila—2—Act of 20†
[12th]* August, 1885—proceedings 22nd of September, 1884—no

[*Figures enclosed in brackets erased in copy.]
[†In pencil in copy.]

protests—the parcel is located in the sitio of San Francisco 3 kilometers under cultivation—bounded on the north by land belonging to Francisco Alava; on the east by land belonging to Pedro Bermudez and Catalina Tolentino; on the south by land belonging to Claro del Rio, Ygnacio del Rio and Juana Alava; and on the west by land belonging to Claro del Rio and Francisca Alava—possession by purchase and inheritance—applicant and predecessors owners for more than 40 years; under cultivation—3—map on scale of 1.2500—4—report—land of superior quality under cultivation in palay—assessed at 11 pesos per hectare—area 6.2097 hectares. Assessment—68.30 pesos—September 25, 1885—No. 1277—returned to the Assistant for correction—October 3, 1885—The Assistant returned same with the true area at 6.2097 hectares—October 13, 1885 No. 1384—a report transmitted to Inspection General proposing the free composition in accordance with Article 5. To the Assistant of Laguna—September 25, 1885 No. 1277—the area of which is shown on the map measured at Pila in favor of Ygnacio Alava differs from that which is expressed in the report—to the end that the documents may be made to agree the said expediente is returned
209 to you—may God, etc.—55—more than 40 years—Act—Article 5.

DEPARTMENT OF THE INTERIOR,
BUREAU OF PUBLIC LANDS, MANILA.

I certify that what is contained in the preceding page is a literal copy of the expediente in the matter of the composition of lands located in the sitio of San Francisco in the Jurisdiction of the town of Pila (Laguna) applied for by Don Ygnacio Alava, the cession of which is not contained in the said expediente.

This present is given upon application of Mr. John W. Haussermann at Manila, 7th June, 1904.

P. S. BLACK,
Acting Chief, Office of Public Lands.

Indorsement on the above: This is to certify that this 20th day of July, 1904, at 11 o'clock A. M. there was received through the mail by this office the foregoing documents. William M. Brower, Clerk of the Judicial District of Tierras Altas.

210 APPLICANT'S EXHIBIT U.

23RD JANUARY, 1886.

The Assistant of Laguna transmits an expediente which contains: 1st—certification of the application of Ygnacio Alava of 3rd August, 1882—applying for the composition of one parcel of land which he possesses in the town of Pila—2nd—Act—4th December, 1885—proceedings October 8, 1884—no protests—the parcel is located in the sitio of Magalangan 3 kilometers under cultivation—bounded on the north by the lands of Roman de Ocampo and Julian Regondolo; on the east by the lands of Telesforo Oca, Juan Pobres and Leon

Jubal; on the south by the lands of Ambrosio Quiap and Dalmacio Alia; and on the west by the lands of Ambrosio Quiap—possession by inheritance, the applicant with his predecessors in possession for more than 30 years, having conveyed to Antonio Lari and Lari to Lorenzo Rivera, who possesses the same at present—3-map on scale of 1:2500—4—report—land of superior quality devoted to the production of cocoanuts—assessed at 12 pesos per hectare—area—1.9519 hectares.

Assessment 23.42 pesos—February 10, 1886—No. (illegible)—report tranmitted to the Inspection General proposing the free composition in accordance with Article 5th—Inspection General February 10, 1886.—No. 204—Most Illustrious Sir—I have the honor to remit to your illustriousness the reports of 7 expedientes concerning the composition of lands in Pila (Laguna) under instructions from the Assistant of the section and at the instance of the individuals who appear on the back—may God, etc.—Remitting reports 7 expedientes concerning the composition of lands in Pila (Laguna)—Ygnacio Alava—Inocencio del Rio—Maria Gravato and heirs—Clara Aquino—Juan Fajardo—Tomas Rebong—Lorenza Terralva—and

211 the applicant Don Lorenzo Rivera and his predecessors have the same under cultivation holding the estate by purchase—more than 30 years—act—article 5th—

DEPARTMENT OF THE INTERIOR,
BUREAU OF PUBLIC LANDS, MANILA.

I certify that what appears on the preceding page is a literal copy of the expediente in the matter of the composition of lands situated in the sitio of Magalangan in the jurisdiction of the town of Pila (Laguna) applied for by Don Ygnacio Alava and acquired by purchase by Don Lorenzo Rivera, cession of which is not contained in the expediente.

This is given upon the application of Mr. John W. Haussermann at Manila, June 7, 1904.

P. S. BLACK,
Acting Chief, Office of Bureau Lands.

Indorsement on the above: I hereby certify that this 20th day of July, 1904, at 11 o'clock A. M. there was received through the mail by this office the foregoing documents. William M. Brower, Clerk.

212 APPLICANT'S EXHIBIT V.

13TH FEBRUARY, 1886.

The Assistant of Laguna transmits an expediente which contains—1st—certification of the application of Alejandro San Juan de —— 7th August, 1882—applying for the composition of two parcels of land which he possesses in the town of Pila—2—Act 20th December, 1885—proceedings 10th September, 1884—no protests—the parcel is located in the Sitio of Nanjaya 4 kilometers under cultivation—bounded on the north by the lands of Aglipino Oca; on the east by

the lands of Justo San Jose; on the south by the lands of the same and Juan Herradura; and on the west by the lands of Lorenzo and Juan Herradura, and the road to Nanjaya—possession by purchase, applicant and his predecessors being in possession more than 40 years—3-map on scale of 1:2500—4-report—land of superior quality devoted to building site—assessment 70 pesos a hectare, area 0.1541 hectares—assessment 10.79 pesos March 2, 1886—No. 339—report transmitted to the Inspection General proposing the free composition in accordance with Article 5th, assessment being reduced to 20 pesos per hectare which with the .1541 hectares are worth 3.08 pesos—129—it constitutes a site with fruit trees which have been in possession of and under cultivation by the applicant and his predecessors in title for more than 40 years—act—Article 5th—being valued at—reduced to 20 pesos—0.1541 hectares valued at 3.08 pesos.

213

DEPARTMENT OF THE INTERIOR,
BUREAU OF PUBLIC LANDS, MANILA.

I certify that what appears on the preceding page is a literal copy of the expediente in the matter of the composition of lands located in the sitio of Nanjaya in the jurisdiction of the town of Pila, Laguna, offered for composition by Don Alejandro San Juan, cession of which is not contained in the said expediente.

Given upon the petition of Mr. John W. Haussermann at Manila 7th June, 1904.

P. S. BLACK,
Acting Chief, Office of Public Lands.

Indorsement on the above: I hereby certify that this 20th day of July, 1904, at 11 o'clock A. M. there was received through the mail by this office the foregoing documents. William M. Brower, Clerk of the Judicial District of Tierras Altas.

214

APPLICANT'S EXHIBIT W.

AUGUST 31, 1885.

The Assistant of Laguna transmits the expediente which contains:—1st-certification for application of Lorenzo Rivera of First August, 1882—applying for the composition of two parcels of land which he possesses in the town of Pila—2-act—26th August, 1885—proceedings 16th August, 1884—no protests—the parcel is located in the sitio of Santa Clara and under cultivation—bounded on the north by the highway to Santa Cruz and the River Bulusocan; on the east by a stream; on the south by a ditch which separates it from the property of Placido Agra, Benito Rivera, Marcelo Tapia, Gregorio Cantivo and Francisco Natividad; and on the west by the lands of Pio Quinto, Martinez, Marcos Tajas, Juana Jalica, Valerina Panaag, Narciso Zarza, Marcelino Arretica, Lorenzo Reboya, solar del pueblo, Pascual Bande, Melchor del Mundo, Deonisio Lara, Felix Cortesano, Abdon Malimutin, Angel Malubay, Juan Fajardo, Nicasio Francia, Juan Noroña, Tomas Balatasat, Anto. Agra, Cortada street, Alfonso

Francia, Francisco Bunbong, José Asuncion, Barcelisa Baldosa, Severino Alboroto, Vicente Natividad, Juan Bilutan, Circiaco Villesa, Sebastian Ambella, Antonio Gardose—possession by inheritance; applicant and his predecessors in possession for more than 40 years—the second parcel applied for by the interested party in his application, he possesses only by mortgage and this having been redeemed before the measurement it was not measured. 3-map on scale of 1:2500—4-report—land of superior quality cultivated in palay—assessed at 8 pesos a hectare—area 32.6413 hectares—assessment 261.13 pesos—September 28, 1885—No. 1295—report transmitted to the Inspection General proposing the free composition in
215 accordance with Article 5th; assessment amounting to 10 pesos per hectare in which the 32.6413 hectares will be worth 326.41 pesos—1125—more than 40 years—Article 5th—valuation—amounting to 10 pesos—the 32.6413 hectares will be worth 326.41 pesos—Inspection General—September 28, 1885—No. 1295—Most Illustrious Sir—I have the honor to transmit to your illustriousness report on 4 expedientes in the matter of the composition of lands at Pila (Laguna) under instruction from the Assistant of that section upon the instance of Lorenzo Rivera, Luis N. Rivera, Martin Santos, rubrico†
and Feliciano Relova—act—[flourish].* Transmitting reports of 4 expedientes for the composition of lands in Pila, Laguna.

216 DEPARTMENT OF THE INTERIOR,
BUREAU OF PUBLIC LANDS, MANILA.

I certify that what appears on the preceding pages is a literal copy of the expediente in the matter of the composition of lands located in the sitio of Santa Clara in the jurisdiction of the town of Pila (Laguna) applied for by Don Lorenzo Rivera, the cession of which is not contained in the said expediente.

Given upon the application of Mr. John W. Haussermann at Manila, June 6, 1904.

P. S. BLACK,
Acting Chief, Office of Bureau of Lands.

Indorsement on the above: I hereby certify that this 20th day of July, 1904, at 9 o'clock A. M. there was received through the mail by this office the foregoing document. William M. Brower, Clerk of the Judicial District of Tierras Alatas.

217 APPLICANT'S EXHIBIT X.

Inspection General of Forests of the Philippine Islands—middle district of Luzon—section of Laguna—Province of Laguna—town of Pila—expediente No. 1143—interested party Ygnacio Alava by his wife Maria Rivera—in the matter of the composition of lands—1885—begun August 3, 1882—transmitted on August 31, 1885—

[*Word enclosed in brackets erased in copy.]
[†In pencil in copy.]

the Assistant of Laguna transmits an expediente which contains:—1st—certification of the application of Ygnacio Alava 3rd August, 1882—soliciting the composition of the parcel of land which he possesses in the town of Pila—2—act of 12th February, 1885—proceedings 28th June, 1884—no protests—the parcels are located in the sitio of Garol 6 kilometers under cultivation—bounded on the north by a canal and land belonging to Apolinario Rubiales; on the east by the lands of Feliciano Relova and the canal; on the south by the same canal; and on the west by the lands of Apolonio Rubiales and Victoriano Arjone—possession by inheritance, the applicant with his predecessors being owners for more than 30 years, and land being under cultivation—3—map on scale of 1.2500—4—report—land of superior quality, land partly uncultivated and partly cultivated in palay—assessment 9 pesos per hectare—area 5.5163 hectares — assessment — 49.65 pesos — September 21, 1885 — No. 1271—report transmitted to the Inspection General proposing the free composition in accordance with Article 5th—1143—being possessed by Maria Rivera, who is represented by the applicant and his —— —more than 40 years—act—part being under cultivation for more than 30 years—article 5th—

218

DEPARTMENT OF THE INTERIOR,
BUREAU OF PUBLIC LANDS, MANILA.

I hereby certify that what appears on the preceding page is a literal copy of the expediente in the matter of the composition of lands located in the sitio of Garol in the jurisdiction of the town of Pila (Laguna) applied for by Don Ygnacio Alava in the name of his wife, Doña Maria Rivera, cession of which is not contained in said expediente.

Given upon the application of Mr. John W. Haussermann, Manila, June 7, 1904.

P. S. BLACK,
Acting Chief, Office of Public Lands.

Indorsement on the above: I hereby certify that this 20th day of July, 1904, at 11 o'clock A. M., there was received at this office by mail the foregoing documents. William M. Brower, Clerk.

219

APPLICANT'S EXHIBIT Y.

23RD OCTOBER, 1885.

The Assistant of Laguna transmits an expediente containing:—1st—certification of the application of Basilio Alava of 7th August, 1882, soliciting the composition of one parcel of land which he possesses in the town of Pila—2—act 20th September, 1885—proceedings 9th July, 1884—no protests. The parcels are located in the sitio of Banca Banca 4 kilometers under cultivation—the first is bounded on the north by the lands of Vicente Hocson, Nico[demes]* Arjona, medes†

[*Word enclosed in brackets erased in copy.]
[†In pencil in copy.]

Pioquinto Malelon, and Mariano Alava; on the east by the highroad to Calauang; on the south by the same and lands of Ygnacio Alava; and on the west by lands of Juan Alava and Vicente Hocson—the medes†
second is bounded on the north by the land of Nico[demes]* Arjona; on the east by the land of Vicente Hocson; on the south by the land of Ygnacio Alava; and on the west by the highroad of the Barrio. Possession by inheritance, applicant with his predecessors in possession for more than 40 years—makes known that the two parcels being united the interested party considers them as one in the application, separating them for the purposes of measurement—3—map on scale of 1.2500—4—report—lands of superior quality cultivated in part in sugar cane and part uncultivated—assessment 8 pesos per hectare—area

1st	7.6745	hectares.
2nd	2.1988	"
Total	9.8733	"

Assessment:

1st	59.33	pesos.
2nd	17.61	"
Total	76.94	"

November 10, 1885 (appearing in the margin). N .1571. Report transmitted to the Inspection General proposing free composition in accordance with Article 5th—the assessment being made
220 uniform, assessing at 10 pesos per hectare, in accordance with which the 9.8733 hectares will be worth 98.73 pesos. The applicant having the same in his possession and under cultivation—more than 40 years—act—Article 5th—valuation—the assessment being made uniform at 10 pesos per hectare according to which the 9.8733 hectares will be worth 98.73 pesos.

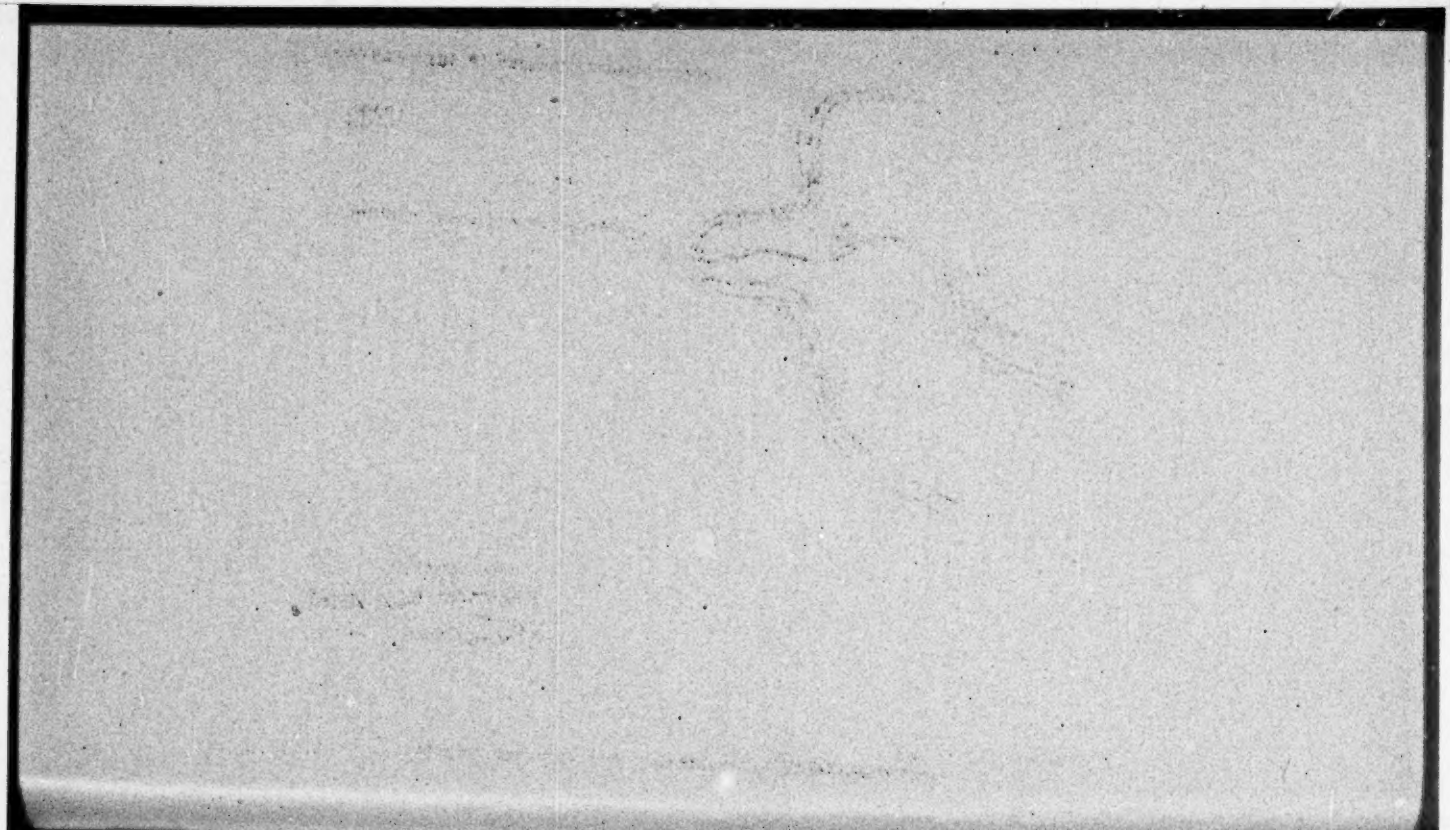
DEPARTMENT OF THE INTERIOR,
BUREAU OF PUBLIC LANDS, MANILA.

I hereby certify that what appears on the preceding page is a literal copy of the expediente in the matter of the composition of lands located in the sitio of Banca Banca in the Jurisdiction of the town of Pila, Laguna, applied for by Don Basilio Alava, the cession of which does not appear in the expediente.

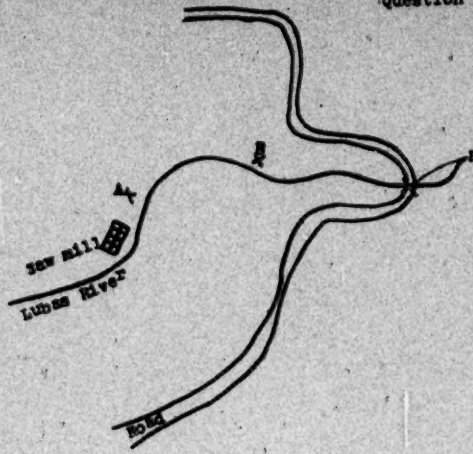
Given upon the request of Mr. John W. Haussermann, Manila, 7th June, 1904.

P. S. BLACK,
Acting Chief, Office of Public Lands.

Indorsement on the above: I hereby certify that this 20th day of July, 1904, at 11 o'clock A. M., there was received through the mail by this office the foregoing documents. William M. Brower, Clerk of the Judicial District of Tierras Altas.



Question by Mr. Bassett to Iga. Bayong.



No. 298.
Carino
to
Bautista
p. 233

Government's Exhibit A. offered by Mr. Bassett.

221 PLAINTIFF'S EXHIBIT Z.

23RD OCTOBER, 1885.

The Assistant of Laguna transmits expediente which contains—1st—certification of the application of Vicenta Villarico of 4th August, 1882—applying for the composition of two parcels of land which she possesses in the town of Pila—2—act—26th September, 1885—proceedings 9th November, 1884—no protests—the parcels are located in the town and bounded as to the first, on the north by the lands of Macario Agra and Maximino Espiritu; on the east by Real street; on the south by a lane; and on the west by the New River street—the second is bounded on the north by the lands of Apolonio Rivera; on the east by Bulilan street; on the south by the lands of Lorenzo Terralva; and on the west by lands of Benito Rivera—possession by inheritance, the applicant and his predecessors being the owners for more than 50 years—3—map on scale of 1:1000—4—report—land of superior quality devoted to building site—assessment 50 pesos per hectare.

	Area.	Assessment.
1st	0.3536 hects.	17.68 pesos.
2nd	0.1387 "	6.94 "
Total	0.4923 "	24.62 "

November 10, 1885—No. 1571—report transmitted to the Inspection General proposing the free composition in accordance with Articles 5th—1301—more than 50 years—act—article 5th—

222 DEPARTMENT OF THE INTERIOR,
BUREAU OF PUBLIC LANDS, MANILA.

I certify that what appears on the preceding page is a literal copy of the expediente in the matter of the composition of lands located in the town of Pila, Province of Laguna, applied for by Vicenta Villarico, concession for which is not contained in the said expediente.

Given upon the request of Mr. John W. Haussermann, Manila 7th June, 1904.

P. S. BLACK,
Acting Chief, Office of Public Lands.

Indorsement on the above: I hereby certify that this 20th day of July, 1904, at 11 o'clock A. M., there was received through the mail by this office the foregoing documents. William M. Brower, clerk.

(Here follows diagram marked p. 223.)

224 DEFENDANT'S EXHIBIT B.

(Here follows map marked p. 225.)

226 GOVERNMENT'S EXHIBIT D.

Government of the Province of Benguet.

Office of the Provincial Governor.

BAGUIO, BENGUET, P. I., *Sep.* 11, 1903.

J. H. Wilson, Clerk of the Court of Land Registration, Manila, P. I.

SIR: I have the honor to return to you the papers in regard to registration of title of Mateo Cariño, covering certain lands in the province of Benguet. It is impossible for me to make the certificate requested in yours of August 11. The facts that I can learn, regarding this matter are as follows:

Mateo Cariño is regarded as a wealthy man among the Igorrotes, he has a very good house that in itself will probably be covered by the valuation of 4000 pesos, he has rice fields that are quite valuable, he claims jurisdiction over mountain lands for herding, he has great herds of cattle and many ponies. All of this he claims possession of besides this particular land which is described in the enclosed papers. On all his property, without description or specification, he has paid taxes into the municipality of Baguio, Benguet. In 1901 25 pesos, in 1902 25 pesos, this being ½% tax on an avaluation of 5000 pesos. In 1903 he paid 20 pesos, this being ½% of an avaluation of 4000 pesos. He has no titles whatever to any land, although he has been in undisputed possession of the land on which he lives for nearly thirty years. I cannot therefore certify that he has ever paid any tax on the property herein described, beside which I consider that it is within my province
227 as Governor of Benguet, to enter into some detail regarding the several transactions connected with the history of this particular land-deal: First, under the Spanish Government, regardless of the royal decree May 14th 1867 Art. 8 it was the practice of the Spaniards to give no title, of any nature whatever, to the Igorrotes, therefore there are none extent. Igorrote chieftains like Mateo, simply by force of character, maintained their dominant sway over large tracks of land in the province of Benguet. The boundary lines of these lands were sharply defined, as between the different chiefs, and the territory of this particular bucnan or headman, extended over a great many miles from the eastern boundary of the land herein described to the Irisan on the west, nearly 20 kilometer- in length. Other chiefs maintained domination or possession of like extensive domains. During the insurrection of the Filipinos against the United States, General Bell was given the command of all this part of the north. He personally made reconnoissance throughout this province, he became convinced from his personal observations in other parts of the world and his experience in the tropics, that in the future it will be inevitable that a great army post for health and recuperation would be established in this mountain province. So thoroughly was he possessed of this idea that he himself selected the land on which this post should here-

after be established. He reported these facts to his superiors an
urged the proposition to such an extent that, so far as local la
would permit, it seemed to be an established fact that the Gover
ment would make this reservation. Before taking all thes
228 steps, General Bell ascertained from all sources in his powe
the fact that there were no titles to these grounds in law
that there were no squatters' rights in these grounds to the exte
of any improvements whatever or any marks or signs showing th
the ground was inhabited or claimed for the purpose of inhabitatio
Now, at this time, comes a certain Mr. Clark, who, taking advanta
of the native custom, allot-ing lands to different chiefs, has th
Igorrote make a claim of possession of this particular track of lan
which, because the Military desired it, has become suddenly in hi
mind, valuable. The proceedings from that date to this are, o
course, within your reach, but the preceding history which I hav
given you, as above, is traditionary, traditionary but authentic an
is not on paper where you could possibly touch it in your court
The land herein described is within that track of land reserved b
the Philippine Commission in Act No. 636.

Yours Respectfully, WILLIAM F. PACK,
Provincial Governor, Benguet.

Defendant's Exhibit "D."

229 Department of Justice of the Philippine Islands.

Office of the Attorney General.

MANILA, P. I., *June* 25, 1904.

SIR: I enclose herewith the deposition of Mr. P. S. Black, Actin
Chief of the Bureau of Public Lands, taken in Manila before M
Charles C. Cohn on June 4, 1904. I have delayed transmitting th
to you on account of delay in securing the petitioner's exhibit- C
R, S, T, U, V, W, X, Y and Z. I enclose said exhibits and als
the Government's exhibit- E and F.

Please file these papers in the Cariño case and deliver same t
the Judge immediately on his return from Cervantes.

Respectfully, A. BASSETT,
Assistant Attorney.

To the Clerk of the Court of Benguet Provinces, Baguio, Benguet

230 DEFENDANT'S EXHIBIT E. Charles C. Cohn, Notary Public.

JULY, 1895.

No. of order in the entry.	Day of entry.	Data of document. Day.	Month.	Year.	Number of origin.	Where from.	Extract.	Distribution of the divisions.
*	*	*	*	*	*	* *	* *	
5839	13	6	July	1895	5	From the direction	Office of the Junta of Laguna, Stating that no expediente has been sent out dur the month of June last.	Juntas.
5840	"	3	"	"	94	From the same.	Same of same of Negros Oriental. Showing the selling price of 6.46 fixed for sales of lands in that province to be excessive.	Lands.
5841	"	5	"	"	266	From the same.	Office of Commandant of Benguet. Transmitting denouncement of lands belonging to the Igarote Laboaso @. Piraso.	do.
5842	"	"	"	"	267	From the same.	Same as to Mateo Corantes.	do.
5843	"	"	"	"	268	From the same.	Same as to Mateo Carifio.	do.

231

CEC

DEPARTMENT OF INTERIOR,
BUREAU OF PUBLIC LANDS, MANILA.

I, P. S. Black, Acting Chief of the Bureau of Public Lands, do hereby certify that I am the Official custodian of a book of records of the former General Inspectorate of Forests entitled "Libro de Entrada de la Inspección General de Montes," containing the entries made during the period October 6, 1894 to July 17, 1895, and that the copy attached hereto is a true and literal exemplification of the successive entries found under numbers 5839, 5840, 5841, 5842 and 5843, on page 791 of the said book.

Signed in Manila, this third day of June nineteen hundred and four.

P. S. BLACK,
Acting Chief, Bureau of Public Lands.

On the back appears the following:

I hereby certify that on this 20th day of July, 1904, at 11.00 a. m., there has been received at this office, by mail, the foregoing document.

WM. M. BROWER,
Clerk Mountain Judicial District Court.

232 DEFENDANT'S EXHIBIT F. Charles C. Cohn, Notary Public.

620. SEPTEMBER, 1897.

No. of order in the entry.	Day of entry.	Data of document. Day.	Month.	Year.	Number of origin.	Where from.	Extract.	Distribution of the divisions.
*	*	*	*	*	*	* *	* *	*
*	*	*	*	*	*	* *	* *	*
6617	18	16	Sept.	1897	...	From the direction	Transcription from office of the Secretary of the Governor General, stating that under no circumstances may lands in Benguet — ceded until it is shown definitely who should occupy the Sanatorium and other properties of the same.	Lands.

233 DEPARTMENT OF INTERIOR,
BUREAU OF PUBLIC LANDS, MANILA.

CEC

I, P. S. Black, Acting Chief of the Bureau of Public Lands, do hereby certify that I am the official custodian of a book of records of the former General Inspectorate of Forests, entitled "Libro de entrada de la Inspección General de Montes, containing the entries made during the period from January 11, 1897 to February 10, 1898, and that the copy attached hereto is a true and literal exemplification of an entry found under number 6617, on page 620 of the said book.

Signed in Manila, this third day of June, nineteen hundred and four.

P. S. BLACK,
Acting Chief, Bureau of Public Lands.

On the back appears the following:

I hereby certify that on this 20th day of July, 1904, at 11.00 a. m., there has been received at this office, by mail, the foregoing document.

WM. M. BROWER,
Clerk Mountain Judicial District Court.

234 GOVERNMENT'S EXHIBIT G.

No. 79, Bureau of Archives, Manila.

Stamp reading Province of Benguet—Secretary. Folio 24—No. 10—

Promise of sale of a piece of rural property executed by its proprietor Mateo Cariño, in favor of Mr. Metcalf A. Clarke. At Baguio, the 3rd October, 1901, before me, Charles Alvares Sobral, acting Secretary of the Province of Benguet, and *ex-officio* Notary Public in and for the same, with residence at Baguio, appeared: On the one part Mr. Metcalf A. Clarke, merchant, of full age, married, and resident in Manila, with personal cedula No. A35356, issued by the Administration de Hacienda Publica de Manila; and on the other part, Mateo Cariño, proprietor, of full age, married and resident of Baguio, capital of the province of Benguet, without personal cedula by reason of the abolition of law No. 111 of the Civil Commission of the United States in the Philippines—and both parties possessing in my judgment the legal capacity requisite for the execution of this document of promise to sell, and nothing to the contrary appearing, they freely and spontaneously declare:—First:—Mateo Cariño declares that he is in possession of real estate situated in the sitios of Ipit and Lubas, municipal jurisdiction of the town of Baguio, Province of Benguet, without name, the area of which approximates 152 hectares, being bounded, according to the annexed map, on the north partly by the stream of Lubas, partly by the road to Loakan, the lands of the Igorote Piraso, and the lands of the Igorote Mateo Carantes; on the east by the lands of the Igorote Pisla; on the south by lands belonging to the jurisdiction of the Barrio of Loakan, jurisdictional lands of the sitio of Pias; and on the west partly by the jurisdictional lands of the sitio of Pias and

235 partly by the stream Lubas in its southerly direction; declaring that this land is free from all charges and encumbrances, and that he possesses the same exclusively by inheritance from his parents as shown by the possessory information which on the 21st of February, 1901, he presented to the Judge of First Instance of La Union and Benguet, possessory information which was approved in all its parts and inscribed in the registry of property at folio second on the reverse of the sheet, volume first of the Ayuntamiento of Baguio, the capital of the Province of Benguet; realty No. 2 inscription No. 1, San Fernando 11th March, 1901; signed Nemesio Bonoan, Register of Property of La Union and Benguet—in accordance with the marginal note at the foot of the possessory information mentioned above and official copy of which is in my possession by way of deposit made by Sr. Mateo Cariño to me, I issued the necessary receipt, the same being deposited as guaranty to Mr. M. A. Clarke, who asked for it for better security of the contract, which is now being executed.

2. Said Sr. Mateo Cariño promises to sell this land to Mr. M. A. Clarke as soon as he obtains from the Government of the United States, or its representatives in the Philippines, real and definitive

title to said land in accordance with the laws in this respect enacted by the Civil Commission of the United States in the Philippines.

3. Mr. M. A. Clarke agrees to pay to Mr. Mateo Carino the sum of 100 Mexican Dollars with these presents as earnest money, and by way of consideration for this obligation and upon the signing of the contract of final sale the sum of 5900 Mexican dollars, which with the 100 dollars delivered today will make 6000 Mexican dollars as the price which he will pay to *the* Sr. Mateo Cariño for the acquisition of the land referred to.

236 4. The parties hereto agree that Mr. Metcalf A. Clarke shall take preventative immediate possession of the land of Mateo Cariño, exercising upon said land the rights inherited to the real proprietor until such time as Sr. Mateo Cariño may have obtained real title to the same upon which Mr. M. A. Clarke will obtain possessioñ absolute and definitive to the said land upon payment of the stipulated price; but if after 60 days from the time when Sr. Mateo Cariño shall have obtained the real title to said land Mr. M. A. Clarke shall not have paid the balance of the 6000 pesos owing as the price of the sale of the lands in question, then, in such case, Mr. M. A. Clarke will lose the 100 pesos which he delivered as earnest money to Sr. Mateo Cariño and will surrender at the said time the permanent and peaceful possession of said lands free from charge and obligation.

5. The parties hereto agree that Sr. Mateo Cariño shall, as soon as he obtains real title above mentioned, inform Mr. M. A. Clarke of the fact of having obtained the same, and that the term of 60 days within which the balance of the purchase price is to be paid will be counted from the day on which Mr. M. A. Clarke receives said notification, Sr. Mateo Cariño promising on his part to obtain said real title and to notify Mr. M. A. Clarke of its acquisition immediately after the Civil Commission promulgates the acts in regard to property and title, which it must decree.

Declared and executed in the presence of the necessary witnesses: Sr. Augustin Villenueva y Basco and Sr. Sinforiano Madayag é Brillantes, both clerks of full age and residents of this capital. And being informed of the rights which the law confers as to the reading of this document, proceeded in accordance therewith to its reading, and the notary having interpreted the English language in

237 view of the fact that I am official interpreter, and there being also interpreted into the Igor-ote language by my actuary, of which language he is official interpreter, the parties hereto ratified the same and all signed except the party, Sr. Mateo Cariño, who, by reason of the fact of his not knowing how to sign, made in my presence a mark with the tip of his index finger of his right hand. To all of which and to the knowledge, profession and residences of the parties and witnesses I certify.—in parenthesis—the words "el—presto—y—los—del—de—(he—offered—a n d—those—of the—of) are cancelled. Interlineations:—the words "los—presentó—é—con—el—terreno—á" (he—presented—them—with—t h e—land—to) stand. M. A. Clarke. Mateo Cariño, mark. As witnesses of the mark: Augustin Villenueva—Juan Mateo Cariño—flourish—Sinfo. Madayag, flourish—Carlos Alvarez Sobral. The notarial seal. I

issued the first copy to Mr. M. A. Clarke on two sheets common paper, sealed paper having been abolished from use in this province of Benguet by law 111 of the Civil Commission of the United States in the Philippine Islands, which copy I have issued on this same day of the execution of the original. I so certify. Carlos Alvarez Sobral. (5 lines omitted.)†

NOTE.—On the 11th day of November, 1901, Mr. Metcalf A. Clarke, the purchaser, desiring that the wife of the other party, Mateo Cariño, should also sign this document, the said wife, named Bayoso, signed in my presence, making a mark with the index finger of her right hand by reason of the fact that she did not know how to sign. As to which I certify. Bayosa, mark. Carlos Alvarez Sobral.—

I issued the second copy in favor of Mr. M. A. Clarke upon the application of his attorneys, Messrs. Coudert Brothers, of
238 Manila, in five sheets of common paper, written on the typewriter. The use of stamped paper having been abolished in this province of Benguet by law 111 of the Civil Commission in the Philippine Islands on the 18th day of April, 1903. P. Ewagar, Provincial Secretary and *ex-officio* Notary Public of Benguet. I certify that the foregoing copy is literally taken from its original, which is filed in this office, and I seal and sign the same at Manila this 6th day of June, 1904. Manuel M. Miranda, Acting Chief Bureau of Archives. *Ex-officio* Notary Public. Seal of the Bureau of Archives.

Indorsement on the above: I hereby certify that this 13th day of June, 1904, there was received in this office the foregoing document. William M. Brower, Clerk of the Judicial District of Tierras Altas.

239 GOVERNMENT'S EXHIBIT "H."

MANILA, P. I., *June* 7, 1904.

Deposition of Manuel M. Miranda, Acting Chief of the Bureau of Archives, taken in pursuance of an order of the Court of First Instance of the Province of Benguet, in the case entitled *In re* Application of Mateo Cariña for the registration of title to lands.

A. Bassett, Assistant Attorney, appeared for the Government, and J. W. Haussermann of Coudert Bros. appeared for the applicant, Mateo Cariña.

The witness, having been duly sworn, testified as follows:

By Mr. BASSETT:

Q. What is your name?
A. Manuel M. Miranda.
Q. Where do you live?
A. At No. 60 Calle Legaspi, Intramuros.

[† In pencil in copy.]

Q. What is your business?

A. At present Acting Chief of the Bureau of Archives.

Q. In your capacity as the Acting Chief of the Bureau of Archives, have you made a search for a petition or an expediente presented by Mateo Cariño to the Commandante of the Province of Benguet, at any time since the year 1880?

A. I have made a search.

Q. And what was the result of your search?

A. I did not find any. All the expedientes we had there in regard to composition and sale of lands by the Government have been transferred to the Bureau of Public Lands. There were about twelve thousand expedientes from all the provinces.

Q. Have you made a search in the Bureau of Archives for letters and all documents which might relate to this matter?

A. Yes.

Q. And what did you find?

A. Nothing relative to Mateo Cariño.

240 Q. Did you make a search through the Official Gazette which has been published since 1894, to see whether there had been published therein a notice that Mateo Cariño had filed an application for the composition of lands?

Mr. HAUSSERMANN: Objected to as incompetent, irrelevant and immaterial, as calling for the conclusion of the witness of the contents of Official Gazettes which are now in existence and which are the best evidence of what they contain.

Ans. Since 1894. I have searched them carefully and have found nothing. Up to 1897 and 1898.

Mr. HAUSSERMANN: I move that the answer be stricken out for the reason that the witness' testimony indicates that he is testifying as to the contents of papers and official records which are in existence and are the best evidence of their contents.

(By Mr. H.:)

Q. What Official Gazettes did you examine?

A. From 1894 to 1898.

Q. When did you examine them?

A. Last month.

Q. Where did you examine them?

A. In my office. Repeatedly and by several persons.

Q. Did you personally examine each one of the Official Gazettes for those years?

A. Some of them were looked up by others, while I looked at some of them.

Q. Then you did not examine all of them?

A. What I went over was also gone over by others.

Q. And those books which you and your office force examine are still in existence in your office?

A. The books are in existence in my office now, and the persons also.

Counsel for applicant renews his motion to strike out all of that

part of the testimony of the witness relating to an examina-
241 tion of the Official Gazettes made by himself or any other person, and that part of his testimony which purports to give to the court the contents of said Gazettes, for the reason that the testimony shows that the witness is testifying from an examination made of certain Official Gazettes which are now in existence, and a portion of which only were personally examined by the witness, the books themselves and documents examined being the best evidence of their contents.

By Mr. BASSETT:

Q. Were all of these Gazettes which you have testified were examined in your office, examined by yourself and other employés of the Bureau of Archives who were there for that purpose?

A. I looked for them myself and for fear I had overlooked anything I had them examined by others. The greater part of them.

Q. But were all of the Gazettes from 1894 to 1898 examined in your office by yourself and by other employés of that office who were there for that purpose?

A. I looked at one while the others were examining other books.

Q. Who are the others that you refer to?

A. Other employés of mine.

Q. And what is their occupation?

A. They are clerks in the office. Old Government employés of the Spanish time.

Mr. HAUSSERMANN:

Q. Do you remember what particular books you examined personally?

A. Absolutely all I did not examine, but I looked at one which has been re-examined while I examined the others. Almost all. The last list there is is in May. It is certainly not there, because it has been well searched.

Q. But you will not say to the Court that you have examined them all personally in order to be able to tell the contents of all those books?

A. I can assure positively that it is not there.

242 Q. Personally?

A. I have seen all books except one personally, but I am certain it is not there because more than one person has searched them. It has been searched and looked over several times. If I were not sure that what was said was true, I would not have certified to it.

Q. Tell us what book it was that you did not examine?

A. I believe it was the last half year of 1894. It was in somebody else's hand while I was going over the rest of them.

Q. But all the other books you examined personally?

A. Yes, all.

Q. So you cannot testify excepting from the examination by the others as to the contents of the books for the last half of 1894?

A. I can assure that it is all right, because more than one person looked it up.

Q. From your own personal knowledge?
A. No. If I did not personally examine it I would not testify to it.
MANUEL M. MIRANDA.

CITY OF MANILA, *Philippine Islands, ss:*

The foregoing deposition was taken before me on the above mentioned date, and the questions and answers were taken by a stenographer and transcribed by him. The deposition was read by the witness, after which he stated it was correct, and signed it in my presence. And I certify that I am not interested in the case nor related to any one of the parties. Exhibited cedula No. 229071 dated Apr. 12-1904 & collected by City Assessor of Manila.

C. A. SOBRAL,
Notary Public.

On the back appears the following:

I hereby certify that on this 13th day of June, 1904, at 2.00 p. m., there has been received at this office, by mail, the foregoing document.
WM. M. BROWER,
Clerk Mountain Judicial District Court.

243 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance, Mountain District, Province of Benguet.

In the Matter of the Application of MATEO CARIÑO for the Registration of Title to Public Lands in Benguet.

Deposition of Mr. P. S. Black, Acting Chief of the Bureau of Public Lands, taken before Mr. Charles C. Cohn, Notary Public.

244 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance for the Mountain District.

In the Matter of the Application of MATEO CARIÑO for the Registration of Public Lands in Benguet Province.

Deposition.

Deposition of Mr. P. S. Black, taken before Mr. Charles C. Cohn, Notary Public. Mr. James W. Duncan, stenographer, duly sworn. Mr. P. S. Black, Acting Chief of the Bureau of Public Lands, duly sworn.

Deposition of P. S. Black, Acting Chief of the Bureau of Public Lands of the Philippine Islands, taken at the office of Coudert Brothers, 86 Calle Rosario, Manila, P. I., on this fourth day of June, nineteen hundred and four, by and in pursuance of the order of the Court of First Instance for the Mountain District, in the matter pending before said Court, entitled *"In re* application of Mateo Cariño for the registration of title of public lands."

The Government appearing by Mr. A. Bassett, Assistant Attorney; and the applicant, Mateo Cariño, appearing by Mr. John W. Haussermann of the firm of Coudert Brothers.

245 Mr. P. S. BLACK, being duly sworn, deposes and says:

Examination by Mr. BASSETT:

Q. What is your name?
A. P. S. Black.
Q. Where do you live?
A. 463 Calle Real, Manila.
Q. What is your business?
A. Chief Clerk, Bureau of Public Lands and at present Acting Chief of the Bureau of Public Lands.
Q. Are all the expedientes filed in the different bureaus and offices of the Spanish Government concerning application for adjustment (composicion) and sale of public lands now on file in the Bureau of Public Lands?
A. They are supposed to be.
Q. Have you made an examination of the expedientes in the Bureau of Public Lands for the purpose of finding whether there was an expediente containing a petition by Mateo Cariño of Benguet Province?
A. I have.
Q. What was the result of your examination?
A. Search failed to disclose any such document.
Q. During your search did you find any record or entry in any book which shows that such an application had been made?
A. Yes, in an old Spanish book, or book left by the former Spanish Government, which appeared to be a sort of letter register, there appeared a note of some such document having been filed.
Q. Have you made a certified copy of the entry in that book?
A. Yes, sir.
Q. Is this document, marked for identification "Defendant's Exhibit E" the copy to which you have just referred?
A. Yes.

Mr. BASSETT: The Government now offers in evidence Defendant's Exhibit E.

246 Q. Did you find other entries in that book relating to the public lands of Benguet Province, or in any other book in your custody?
A. Yes, there was one other.
Q. I now show you a document marked "Defendant's Exhibit F," what is that?
A. That is a certified copy of a page from the Spanish letter book to which I previously referred.
Q. Is that Spanish letter book a part of the archives of your office?
A. Yes, sir.
Q. You are the custodian of that as Acting Chief of the Department?
A. Yes, sir.

Mr. BASSETT: The Government now offers in evidence the document previously marked for identification "Defendant's Exhibit F."
Mr. HAUSSERMANN: I desire to question the witness in refer-

ence to Exhibit F for the purpose of ascertaining its authenticity and competency.

Examination by Mr. HAUSSERMANN:

Q. Do you know by whom the entries therein was made?

A. No further than they appear to be made by a clerk in the Spanish Government in the office of the "Inspeccion General de Montes."

Q. Does said book contain any certificate from any public official of that Department under Spanish Government as to its authenticity?

A. I have not examine- the book to that extent. It has every appearance of being an authentic record.

Mr. HAUSSERMANN: I move that that part "It has every
247 appearance of being an authentic record" be stricken out, for the reason that it is giving an opinion of the witness and is not responsive to the question.

Mr. Haussermann objects to the introduction of Exhibit F for the reason that the same is incompetent, irrelevant and immaterial, and does not purport to be a copy of any official document required to be recorded in any of the archives of the Spanish Government, or its successors, the Philippine Government.

Cross-examination conducted by Mr. HAUSSERMANN:

Q. How long have you occupied the position of Chief Clerk in the Bureau of Public Lands in these Islands?

A. 14 months.

Q. State whether or not the Bureau of Public Lands contains a full and complete record of all the acts and proceedings and expedientes received and acted upon by the Director General de Montes prior to American occupation?

A. Yes, sir, the Bureau of Public Lands is supposed to contain all of such documents now in existence except those relating strictly to timber matters, which are now in the Forestry Bureau.

Q. Did you understand the question? If not, I will ask the stenographer to read the same again?

(Question repeated.)

A. I do understand.

Q. Is that the best answer that you can make?

A. Probably.

Q. I will ask you to produce the petition referred to in Exhibit E as having been made by Mateo Cariño, which is transmitted to that Bureau in 1895?

A. That petition does not appear to be in the Bureau of
248 Public Lands, and probably is not in existence.

Q. Then the Bureau of Public Lands does not contain, as it is supposed to contain, all the records of actions and expedientes received and acted upon by said Department prior to American occupation?

A. My reply is that it is supposed to contain all of those that are in existence. Some might have been destroyed and probably were.

Q. Is it not a fact that the Spanish records relating to the acts of the Director of Montes are incomplete?

A. Yes, sir.

Q. Did you make a careful search for the letter or expediente referred to in defendant's Exhibit F?

A. Yes, sir.

Q. Did you find the original of said expediente?

A. No, sir, I did not.

Q. That is simply a note and it does not indicate any document?

A. Yes, it indicates a letter.

Q. Search was made for all of those?

A. No original of which these are the briefs.

Q. You have no way of telling by whom these briefs were made?

A. I do not know at this time. I might be able to determine.

Q. Do you think you could ascertain in whose handwriting those entries were made?

A. No, I do not think I could. I suppose the man is now in Spain or was killed in the Insurrection.

Q. That is the reason I asked you?

A. I thought you referred to the authenticity. Possibly it was subscribed at the bottom and rubricated in due form by some officer. I did not examine that whole book very closely. I did not realize the necessity of it at the time, if there is necessity. I believe Mr. Bassett examined it and I believe you did also.

Q. Have you any record in your Bureau of the lands
249 within the Philippine Islands claimed to be public lands?

A. No. I have only a negative way of determining them That which is not private land is supposed to be public land.

Q. And that is the only method the Bureau now has of ascertaining whether or not any given piece of land is public land or not?

A. The only method I know of.

Q. That is true of course of Benguet Province also?

A. That is true of Benguet Province. When a man comes into the office and asks if a certain piece of land is public land, we usually tell him to go to the locality in which the land that he refers to is located and to make inquiry of the settlers and residents of that locality as to its status and then go to the capitol of the Province and consult the tax returns, and determine whether anybody is paying taxes on the tract of land, and also to consult in the capitol of the Province the Property Register, the Spanish called it "Registro de Propiedad." The Spanish Government had no surveys made of the public lands. They only surveyed such lands as they disposed of.

Q. Have you in your office expedientes from inhabitants of these islands relating to the composition of lands?

A. Yes, sir.

Q. Have you examined any of said expedientes sufficiently to testify as to what proportion, if any of said expedientes, are applications by inhabitants who claim land by inheritance from ancestors?

A. Yes, sir.

Mr. BASSETT: I object to the cross-examination of this witness on any other expedientes than those referred to in his direct examination, as being improper cross-examination,

(By Mr. HAUSSERMANN:)

Q. About what proportion, Mr. Black, of those expedientes
250 claim the land to have been inherited by the applicant from their ancestors?

A. Those I have examined, the majority appear to be of that class. There are thousands of expedientes there and I only examine a very small percentage of them.

Q. State whether or not Mr. Haussermann requested you to make certified copies of some of said expedientes?

A. Yes, sir.

Q. Are you having them made?

A. Yes, sir.

Mr. BASSETT: I object to the whole line of questioning relating to expedientes other than those referred to in the examination in chief, as being improper cross-examination.

Mr. HAUSSERMANN: The purpose of this answer is to show the form of application that the inhabitants of these Islands made for written title to their lands prior to American occupation, in view of the claim made by the Counsel for the Government at the trial that the testimony of Mateo Cariño in which he stated that he made application to the Spanish authorities at Benguet for written title during the time of Commandante Martinez was an admission that the land in question was acknowledged by said applicant to be Government land. It being contended by the applicant that he claimed to be the absulute owner of said property at the time of making such application.

Mr. BASSETT: I object to the introduction of the testimony for the purpose indicated by the attorney for the applicant, unless he shows by the witness that the applications so made were made under the provision of the Royal Order of February 13, 1894, since Mateo Cariño testified that his application was under the provisions
251 of that order.

(By Mr. HAUSSERMANN:)

Q. Will you produce said certified copies for the purpose of having the same made a part of your deposition?

A. Yes, sir.

Mr. HAUSSERMANN: I now offer in evidence the certified copies marked for identification, "Plaintiff's Exhibits, Q, R, S, T, U, V, W, X, Y, and Z."

Mr. BASSETT: The Government reserves the right to object to the introdiction of those expedientes, after an opportunity has been had to examine them on the grounds indicated above and on the grounds of incompetency.

Objection was later offered to the introduction of the exhibits on the ground of relevancy and competency.

P. S. BLACK,
Deponent.

I hereby certify that the above and foregoing is a true transcription of all the evidence given or offered by said deponent, Mr. P. S. Black, before Mr. Charles C. Cohn, Notary Public, this fourth day of June, 1904.

JAMES W. DUNCAN,
Stenographer.

252 UNITED STATES OF AMERICA,
Philippine Islands, City of Manila:

I, Charles C. Cohn, Notary Public do hereby certify that T. S. Black, was by me first sworn to testify the truth, the whole truth and nothing but the truth, and that the deposition by him subscribed as above set forth was taken in short-hand and reduced to writing by James W. Duncan, who is not interested in the suit, and was subscribed by said witness and taken at the time and place heretofore mentioned.

CHARLES C. COHN,
Notary Public.

Commission expires January 1st, 1905.

I hereby certify that on this 20th day of July, 1904, at 11.00 a. m., there has been received at this office, by mail, the foregoing document.

WM. M. BROWER,
Clerk Mountain Judicial Distric- Court.

253 DEFENDANT'S EXHIBIT O.

(Here follows map marked p. 254.)

255 During the April, 1905, Term, the Court of First Instance of the Province of Benguet entered it- opinion and judgment in said cause as follows:

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance, Mountain Judicial District in and for the Province of Benguet.

In re Application of MATEO CARIÑO for Registration of Title to Land.

On Appeal from the Court of Land Registration.

Opinion and Judgment.

On the 22nd day of June, 1903, Mateo Cariño, a citizen of the Philippine Islands, a native and resident of the province of Benguet, and living in the jurisdiction of Baguio, in said province, presented his petition to the Court of Land Regstration, constituted under Act 496 of the U. S. Philippine Commission, praying:—that, in conformity with the law for the registration of property, certain lands of which he was the sole owner, situate in the jurisdiction of the town of Baguio, province of Benguet, might be registered under and in accordance with the provisions of said Act No. 496. The parcel or tract of land described in his said petition being described therein as follows:

"A parcel of land situate in Ipit and Lubas, of the municipal jurisdiction of Baguio, province of Benguet, Philippine Islands, the boundary lines of which are as follows: commencing at the corner of Main Street and Emerson Road, a place carefully located by means of bearings from various permanent monuments, and designated by a bar of iron five feet in length firmly planted in the earth, and marked "A" on the accompanying plat; from which point as a place of beginning run S. 30-E., 34, 646. meters; to the second mile stone by the side of the road; from thence in a direction, North, 24 deg. 50 West, 52:20 meters, to the corner marked "1"; thence in a direction North, 66 deg. 30 East, 17;00 meters; thence in a direction, North, 77 deg. 30, East, 44: meters, to a corner marked "3"; thence in a direction, N. 9 deg. 21 East, 16:80 meters, to the point marked "4;" thence in a direction, North, 42 deg. 0, East, 79:60 meters, to the point marked "5"; thence in a direction, North 78 deg. 55
East, 51:0 meters, to the point marked, "6"; thence in a
256 direction, North 64 deg. 18 East, 25:0 meters, to the point marked, "7"; thence in a direction, North, 49 deg. 13 East, 60;0 meters, to the point marked, "8"; thence in a direction, South, 54 deg. 35 East, 29:0 meters, to the point marked, "9"; thence in a direction, South 72 deg. 40 East, 190:0 meters, to the point marked, "10"; thence in a direction, South, 5 deg. 35 East, 1960: meters, to the point marked, "11"; thence in a direction, South, 25 deg. 33 East, 53:0 meters, to the point marked, "12"; thence in a

direction, North, 85 deg. 40 East, 185:0 meters to the point marked, "13"; thence in a direction, North, 30 deg. 33 East, 120.0 meters, to the point marked, "14"; thence in a direction, North, 12 Deg. 18 East, 120:0 meters, to the point marked, "15"; thence in a direction, North, 7 deg. East, 94:0 meters, to the point marked, "16" thence in a direction, South, 27 deg. 50 East, 107:10 meters, to the point marked, "17"; thence in a direction, North, 16 deg. 42 East, 100;40 meters, to the point marked, "18", thence in a direction, North, 68 deg. 35 East, 188:0 meters to the point marked, "19"; thence in a direction, South, 82 deg. 24 East, 23;50 meters, to the point marked, "20"; thence in a direction, South 54 deg. 30 East, 257:0 meters to the point marked, "21"; thence in a direction, South, 16 deg. 30 East, 76:0 meters, to the point marked, "22"; thence in a direction, South, 18 deg. 20 West, 144:40 meters, to the point marked, "23"; thence in a direction, South, 26 deg. 24 West, 5000.0 meters, to the point marked, "24"; thence in a direction, South, 43 deg. 30 West, 66:0 meters, to the point marked, "25"; thence in a direction, South, 2 deg. 5 West, 250:0 meters, to the point marked, "26"; thence in a direction, South, 36 deg. 0 west, 41:00 meters, to the point marked, "27"; thence in a direction, South 43 deg. 15 West, 296:0 meters, to the point marked, "28"; thence in a direction, South, 51 deg. 47 West, 206:0 meters to the point marked, "29"; thence in a direction, South 38 deg. 51 West, 68:0 meters, to the point marked, "30"; thence in a direction, South, 61 deg. 56 West, 253:0 meters, to the point marked, "31"; thence in a direction, North, 66 deg. 17 West, 350:0 meters, to the point marked, "32"; thence in a direction, North, 53 deg. 34 West, 175.00 meters to the point marked, "33"; thence in a direction, North, 48 deg. 27 west, 178:00 meters, to the point marked, "34"; thence in a direction, North, 44 deg. 16 West, 76:0 meters, to the point marked, "35"; thence in a direction, North, 43 deg. 0 West, 170:0 meters, to the point marked, "36"; thence in a direction, North, 49 deg. 30 East, 270:0 meters to the point marked, "37"; thence in a direction, North, 57 deg. 28 East, 200:0 meters, to the point marked, "38"; thence in a direction, North, 59 deg. 48 East, 110:0 meters to the point marked, "39"; thence in a direction, North 16 deg. 15 West, 52:60 meters, to the point marked, "40"; thence in a direction, North 4 deg. 0 East, 200.0 meters to the point of beginning, containing an area of 145 hectareas and 74/100 areas."

After due process and notice, the testimony was taken, and hearing had on said petition; and, after due consideration, a judgment was entered by said Court of Land Registration, on the 4th day of March, 1904, approving the said petition, and directing and ordering the registration of the title of the land above described, and as prayed for therein.

257 In these proceedings, the Government of the Philippine Islands, and the United States of America, by their respective representatives, appeared as adverse claimants; and opposed the registration prayed for by the said applicant, but their opposition was over-ruled and disallowed by the said Court.

On the 30th day of March 1904, the Government of the Philip-

pine Islands, and the United States of America, severally entered and perfected an appeal to this Court, from said decision; and on the 26th day of April 1904, said appeal was duly docketed in this court.

This cause came on for trial *de novo* at the Special May 1904 term of this court and was heard upon the application (as amended) and presented in the Court, below, the several answers of the Governments of the Philippine Islands and of the United States of America, and upon amendments allowed in this court to the original petition in the nature of replies to the answers allowed and filed in this court. A portion of the evidence used in the Court below was introduced upon this trial together with much new and additional evidence.

The pleadings in this court, as reformed and amended, presented, in addition to an issue presented by the general denial of the material facts required to be set forth in a petition to register the title of lands under the Land Registration Act, the following special defenses:

1st. On behalf of the Government of the Philippine Islands that, the land described in the applicant's petition and by him sought to be registered, was public land of the State, to which concession had not been granted or title of ownership thereto issued to and in favor of the applicant, or any other person; nor had possession of the applicant or any other person thereto been confirmed as against the government and,—

258 2nd. On behalf of the United States of America, that, on the 10th day of October 1903, the property described in the applicant's petition was property belonging to the public domain; and that on said 10th day of October 1903, the President of the United States did reserve for military purposes certain property situated in Baguio, Benguet, P. I., described as follows, to wit:

"Beginning at a stone monument 20 feet North of the center of the Baguio and Dagupan Wagon Road, about two miles from Baguio, where an old trail to the saw mill leave- the road; thence North 55 East, for the distance of 527 feet, to a stone monument; thence North 9 West, for the distance of 729 feet, to stone monument; thence North 71 3 East, for a distance of 2, 324: 3 feet, to stone monument; thence North 59 East, for a distance of 623: ffet to stone monument; thence South 45 53 East, for a distance of 2, 679:6 feet, to stone monument; thence North 73 53 East, for a distance of 365:6 feet; thence 4 West, for a distance of 4, 850 feet, to stone monument; thence West, 2, 305: feet, to stone monument 20 feet East of center of the Baguio and Dagupan Wagon Road; thence Northerly, following the sinuosities of the Baguio and Dagupan Wagon Road, 20 feet East of the center of the same, to a stone at point of beginning. Area 535:63 acres, more or less."

a part of which said reserve lies within the land described in the said plaintiff's petition.

Upon the trial in this Court all parties were present, and represented by counsel, and after argument had the said cause was, on the 30th day of May 1904, taken under advisement by this Court, with leave, upon agreement of all parties, to take certain other testimony by deposition; and to present briefs.

These depositions were subsequently taken and filed, in accordance with the stipulation, but by inadvertence and misunderstanding between counsel, the briefs of all the parties were not received by the trial judge until the month of October 1904. This Court acknowledges the valuable assistance of eminent counsel, interested in the same questions herein presented, and not in this cause who have, with permission of the Court, filed with the court additional briefs and authorities upon the general questions involved.

Upon the testimony presented in this court and after due
259 consideration the court makes the following:

Findings of Fact.

1st. Mateo Cariño, the applicant, is an Ygorrote, a native of the province of Benguet, P. I., about 40 to 45 years of age, and a resident of the Municipal Jurisdiction of Baguio in said province.

2nd. Mateo Cariño, the applicant, is the son, and one of several children, of Pablo Cariño, now deceased. Pablo Cariño an Ygorrote, was also a native and resident of the province of Benguet, P. I., up to the date of his death which took place on or about the year 1883. At the date of his death he was a resident of Tublay in said province.

3rd. Pablo Cariño, the father of the applicant, was a son of the Ygorrote Bangley, who was also a native and resident of the province of Benguet, P. I., up to the date of his death, which date is unknown but which certainly occurred more than forty five years ago.

4th. Bangley, the grandfather of Mateo Cariño, lived upon and occupied the land described in the applicant's petition, making it his home and residence, cultivated a small portion thereof to camotes and palay, built and occupied a house thereon, and built and caused to be built on and about said lands sundry sod and stone fences, which with natural obstructions, (and the employment of a herder, not so much to hold the cattle within the pasture as to protect the herds from theft), constituted an enclosure, wherein he pastured his cattle.

There is no evidence, that the land now described by metes and bounds in applicant's petition was, during the lifetime of Bangley, or at any other time since, completely surrounded and enclosed by *permanent* and *substantial fences,* said fences being constructed *on the exact boundary lines,* and in such a manner as to make the enclosure "cattle proof"; on the contrary it is in evidence that some
260 portions of the enclosure was renewed with brush and fallen trees after each rainy season, a necessary custom which is readily understood by those who have lived and travelled through these mountains of Benguet in the gulches of which no fence, of ordinary and usual construction, would withstand the torrents of water that pour down these gulches, which, in the dry season, appear as grassy draws, and, in the baguio seasons, are rushing mountain streams.

With these observations, the Court finds as a matter of fact that Bangley surrounded the land in question with artificial fencing,

a larger portion of such fencing being on and in the immediat vicinity of the land described in the application, which taken wit natural fencing and the fencing necessarily renewed each seaso made it a fenced pasture enclosure sufficient for the holding an pasturing of his cattle according to the customs of the country.

5th. Pablo Cariño, the father of the applicant Mateo Cariñ came into possession of said land by inheritance from Bangley, hi father, according to the Ygorrote custom, and without the inte vention of the courts, written devices or conveyances. During th lifetime of Pablo Cariño the land was similarly occupied and use either by Pablo Cariño or his representatives. Pablo Cariño himsel however, at the date of his death (about the year 1883), and for long time prior thereto, occupied and lived upon other lands i Tublay, at a considerable distance from the lands in question, an at which latter place he died. During the entire or greater portio of the life time of Pablo Cariño the land in question was use principally for pasturage although some small tracts were cultivate to camotes and palay

6th. A short time prior to the death of Pablo Cariño, he divide his personal property, and various lands situated in Tublay, L Trinidad and Baguio, in said province of Benguet, (including th lands in question) used, and occupied and claimed by him, an also in accordance with the Ygorrote custom, without the in
261 tervention of courts, written devices or written documents o conveyance of any kind, among his surviving children, i which division, the lands in question were set apart for, and th possession thereof given to his said son, the present applicant, Mate Cariño. Mateo Cariño has never occupied and lived upon said land but, up to the time of the arrival of the Americans, and until som time in the year 1903, occupied and used the said lands as pastur land, for the pasture of his cattle, horses and carabaos, constructin in addition to the fences constructed and maintained by his grand father Bangley, and his father, Pablo Cariño, other fences of wire and keeping and maintaining gates and bars on the two Ygorrot trails passing through the lands.

There is some proof that the father-in-law of Mateo Cariño live upon the land for some of the time, as the representative of Mate Cariño. There is no proof as to the time, when the land in questio ceased to be actually occupied for residence purposes by the Cariñ family, or their representatives, nor when the very small tracts withi it formerly enclosed or partly enclosed by sod fences ceased to b occupied and cultivated; but from all the evidence produced, an the examination made by the court, at the request of counsel fo all parties, and in their presence, the court finds as a fact that th actual occupation and cultivation of the very small areas and th actual residence of the Cariños, either by themselves or agents and employees, ceased many years prior to the American occupation and that, the land was at that date claimed, occupied and used by Mateo Cariño only for the pasturage of his cattle, horses and carabao. The Court further finds, that as pasture land the time during which the land in question was claimed, occupied and used by Mate

Cariño, Pablo Cariño, his father, and Bangley, his grandfather, exceeds fifty years counting back from the time of the American occupation, and the ratification of the treaty of Paris.

262 7th. Some time during the year 1900-'1 or possibly 1902, (the exact date being immaterial) the Government of the Philippine Islands, without the consent of the applicant, laid out, constructed and opened, and has ever since maintained, a public road and highway through and across the lands described in the applicant's petition. The applicant, Mateo Cariño, protested against the invasion and opening of his lands for this use and occupation to the then provincial Governor of Benguet, Hon. H. P. Whitmarsh, and a notice of his claim to the lands as its reputed owner, posted by him on said lands was torn down and destroyed by parties unknown.

8th. At or about the same time, an American, named MacDonald and another American, named Reavis, severally squatted upon portions of said lands near said public highway, but, on being informed of the claim of ownership of the applicant, both of these squatters abandoned their settlements thereon and removed from the land.

9th. The applicant, Mateo Cariño, having lost a large number of his cattle from pest, his wire fences made the object of theft, and the land in consequence of these two causes, not being longer available for pasturing his cattle, removed the remnant of his stock to other localities for pasturage. The pasturage of the land was further made impracticable and impossible by the establishment thereon of a military reservation of the United States on the 10th day of October 1903; since on or about which date, there has been kept and maintained a military post or detachment, under the command of the Commanding General of the U. S. Army in the Philippines, with orders to the Commanding officers of said post during all or a portion of this time, to keep cattle and stock from said reservation and to further protect it from trespass; and these orders have been enforced.

10th. At the date of the hearing of this case in this court and upon the date of the examination of the said lands by the

263 court, as stated in a previous paragraph, and since the establishment of the military reservation of the United States thereon in the year 1903, the lands described in the petition of the applicant have not been, nor are they now enclosed by fences, either natural, artificial or both combined, constructed, kept up and maintained *upon the exact boundary lines of said tract as described in the applicant's petition;* and the proportions of the artificial fences *upon the exact boundary line* is not more than twenty two per cent. of said boundary lines.

11th. The applicant Mateo Cariño and his father and grandfather, as stated and found in the previous paragraphs herein, have been in the quiet and undisputed possession of the land described in the applicant's petition herein, occupying and using the same, and in the manner and for the purposes as stated and found in the preceding paragraphs of this opinion, for more than fifty years prior to the date of the ratification of the Treaty of Paris. During all of that

time and up to the present date the said Cariños have claimed to be the owners of said lands, and their claim of ownership thereto *has* & respected†
been generally known and recognized ∧ *by the Ygorrotes of the neighborhood and vicinity.*

12th. The Government of the United States of America, and the Government of the Philippine Islands have never formally recognized the claim of ownership or the right of possession of the said Mateo Cariño; but on the contrary, have taken possession thereof, held and occupied the same for public and miliatry purposes, and was so holding, occupying and using the same at the time of the presentation of the applicant's petition for the registration of his title thereto.

13th. No title or document evidencing a title to said land from the Kingdom of Spain in Mateo Cariño, or in any other person, has been issued by the Crown of Spain or its officers, or by any officer of the Kingdom of Spain in these Islands.

14th. No action had ever been taken by the Crown of
264 Spain, or by any of its officers in the nature of a grant, concession, or segregation of these lands from the Royal Domain either by Judicial or administrative action prior to the transfer of sovereignty under the Treaty of Paris.

15th. On the 21st day of February 1901, the said Mateo Cariño, being at that date in the quiet and peaceable possession of the lands described in his petition herein and using the same as pasture lands, instituted a possessory information proceeding in the Court of First Instance of Union and Benguet, as provided, and the form required, under the provisions of Sect. 390 *et seq.* of the Mortgage Law of Spain, as extended to the Philippines in which proceeding he claimed to be the possessor, under the title of ownership, of a parcel of land of 152 hectares of area, and as he states in his said petition "became possessed of the title of owner by inheritance from my father," who in turn inherited it from his father, and the latter from his father." Such proceedings were had therein that on the 9th day of March 1901, the Hon. Isidro Paredes, Judge of said Court of First Instance, allowed, made and signed a decree therein in part in the words and figures following, to-wit: "In view of the articles previously referred to, and in addition thereto, Articles 392 and 393 of the aforesaid Mortgage Law, and articles 436, 438 and 440 of the Regulations for the execution of said Law, His Honor, in the presence of the Clerk of said Court, said that the . . . information submitted should be approved and is hereby approved; and directing that, in view thereof, the inscription solicited by Don Mateo Cariño of the possession of the realty aforesaid may be made a matter of record in the Registry of Property and without prejudice to a better right," and, which said decree was and is based upon the following findings, set forth in said decree, to wit:—"Whereas according to the provisions of Articles 390 of the Mortgage Law, the proprietor,

[† In pencil in copy.]

who may be lacking a written title of ownership shall be able
265 to record his right, previously proving his possession before the Judge of First Instance of the locality wherein the lands are situate: Whereas, it has been proved in this proceeding, by the written testimony taken herein by Don Mateo Cariño, that he possesses, in his own name and by title of inheritance, from time immemorial the lands hereinbefore described; and that the witnesses who have testified herein are residents and proprietors of the place wherein the estate is located their qualifications as proprietors being established by means of the certificate presented with and attached to these proceedings and therefore combine the requisites demanded in Article 901 of the aforesaid Mortgage Law." The lands described in said proceedings although vaguely described are substantially the same lands sought to be registered in this proceeding by the said Mateo Cariño. These proceedings under the Mortgage Law having been so completed and terminated were thereafter presented for record and recorded by the said Mateo Cariño in the Registry of Property for Benguet on the 11th day of March 1901 all as shown by the complete exemplification and copy of the said proceedings attached to and forming a part of the applicant's petition in this cause.

16th. During the time of the Politico-Military Comandante of Benguet, Don José Martinez, (1893-4); and again during the time of the Politico-Military Comandante, Don Antonio Bejar, (1896-7), the said Mateo Cariño made and presented to said Comandantes, respectively, and in their official capacities, an application for the title to said lands under and by virtue of the Royal Decrees of Spain then in force in these Islands, relating to the Crown or public lands, and providing for the adjustment and composition and issuance of written evidence of title by the Crown to Crown Lands that had been in the possession of citizens of these Islands, for prescribed periods of time, and under certain conditions and subject to certain procedure therein prescribed. With the first application no fees were paid; with the second application, the said Mateo Cariño
266 deposited forty pesos. These applications were presented at La Trinidad, the then capital of the province of Benguet. It is admitted, and the court finds as a fact, that no title was ever issued by the Spanish Government in these islands based upon or as a result of either or any of these applications for adjustment and composition.

17th. A search in the Bureau of Archives, and in the Archives of the Land Office, of the present Government at Manila was made in the month of May, 1904, and the testimony of the Chief and Acting Chief of said Bureaus, respectively, was taken, and appears in the record in this cause. This search shows the following results and establish these facts:—neither of the petitions, named and described in the preceding paragraph, were found, nor any other document or papers relating to the lands in question, and no reference to any such application, applications petitions or other documents, *save only* the following abstract from Letter Books of the Archives

of the Land Office, (late Forestry Bureau of the Spanish Government), which may or may not refer to the lands in question.

The first two and the earliest are of equal date, the first abstract reads:—"5842, Received in the Forestry Bureau, July 13th, 1895, through the Dirección Civil, date of instrument July 5th, 1895, No. 267 of the P. M. Comandancia of Benguet," and further abstracted as follows: to wit: "Official letter from the Comandancia of Benguet remitting petition for the denouncement of lands of the Ygorrote Mateo Cariño," and,

The second, exactly the same as the one just described, save the Forestry Bureau number is 5843 and the Comandancia number is 268.

The third and last is also from the Forestry Bureau Archive- and reads as follows:—

"No. 6617, Received in the Forestry Bureau September 18, 1897, dated September 16, 1897, through the Dirección Civil,
267 subject lands, Transmitting official communication from the office of the Secretary of the Governor General and informing (all concerned) *that under no consideration can lands in Benguet be conceded until such time as those lands are designated in a definite manner that the Sanitarium and the other dependencias of the same ought to occupy.*"

18th. On October 3rd 1901, an option contract of purchase and sale of the lands described in applicant's petition, when title thereto should be obtained by the said Mateo Cariño, was made, executed and delivered by said Mateo Cariño to Mr. M. A. Clarke of Manila, covering the lands in question; and the same was thereafter registered and recorded in the Registry of Property of Benguet. This contract of purchase and sale remains in full force and effect.

19th. On the 23rd day of May 1903, the said Mateo Cariño caused the land described in his petition to be surveyed and platted by a competent engineer and surveyor, B. Picton Davis, the plat being attached to applicant's petition, and appearing in the evidence on the trial in this court as Applicant's (plaintiff's) Exhibit "A." By this survey the area is given as 146.7425 hectareas (a slight but not very material difference from that described in the possessory information proceedings, the area of the latter being found as 152 hectareas). The lands shown on this plat correspond to the metes and bounds as set forth in applicant's petition.

Opinion of the Court and Decision.

Before entering upon the consideration of the questions at issue herein, and that require the decision of this court, the Court believes that it should refer to certain matters contained in the proofs presented in this cause that might have a tendency to obscure the facts as found by this Court, and the basis upon which the opinion and decision of this Court rests.

1st. An attempt was made by the contestants to establish the fact that Mateo Cariño inherited these lands from his father-in-
268 law, who it is admitted lived upon the land a portion of the time it was occupied and claimed by Mateo Cariño.

In what capacity he lived there is not shown:—whether he cultivated the small portions indicated to camotes and palay,—very small portions comparatively,—or whether he occupied a hut and looked after Mateo Cariño- stock, in the capacity of a herder, according to the Ygorrote custom, even when the cattle are in so called pastures, it does not anywhere appear in the testimony and the court has made no findings specific in their nature as to the character of this occupation.

To sustain this contention, the contestants produced an Ygorrote witness, named Bayeng, who was sworn and examined. In addition to the fact that this witness swore and testified positively, that Mateo Cariño inherited the land from his father, and, again, that Mateo Cariño inherited the land from his father-in-law; in themselves flat contradictions, the low order of intelligence and unfavorable appearance and manner of this witness while testifying leads the court to the inevitable conclusion that his entire testimony is unworthy of credit and it has been entirely disregarded by this court. The contention that Mateo Cariño inherited the land from his father-in-law, instead of his father, wholly fails in the proof and was abandoned by counsel in their argument.

2nd. In various portions of the record, and especially in a letter written by Hon. Wm. F. Pack, Provincial Governor of Benguet, dated September 11, 1903, and directed to the Clerk of the Court of Land Registration, and which letter appears in the record as Defendant's Exhibit "D," there is much reference made as to the position and character of Mateo Cariño as a "Bucknon," as known and recognized among his own people. This Court considers the entire argument based upon this contention so immaterial and irrelevant that it has not thought it worth while to make any findings of fact upon the proofs offered thereon, and were a new trial to be granted in this case, the court would exclude all evidence whatever
269 relating thereto.

Let it be admitted as a fact then, that Mateo Cariño is *a* called and recognized among his own people as a "bucknon." This has been urged by the defendants, as a confirmation of the statement of Governor Pack that it is a fact that there existed among the Ygorrotes a *"native custom, allotting lands to different chiefs,"* and upon which the contestants' counsel have urged with commendable zeal, that Mateo Cariño should not be allowed to register a title to this land since he acquired and holds them, as a "bucknon" or chief among the Ygorrotes.

Aside from the consideration appearing in Governor Pack's letter itself that he was not stating facts known to him but only traditions and hearsay, there is this consideration of the force and effect of such statements. A statement of Gov. Pack added as a volunteer statement, to a letter or certificate addressed to the Clerk of the Court of Land Registration and stating a tradition that there existed among the Ygorrotes a *"native custom allotting lands to different chiefs,"* does not establish before this court the existence of any such custom, under the rules of evidence, and so far as this case is concerned the existence of any such custom is not proved. But there is also some oral testimony upon the same subject, which proves, if it proves

anything material to the issues in this case, that Mateo Cariño is known among his own race as a "bucknon"; taking the testimony upon this point, and considering it all together, giving to the conclusions and beliefs of the excellent Governor all the weight, to which as a matter of law they are entitled, this court believes from all the evidence, and the court's belief is confirmed by his own observations and experience among the Ygorrotes, that Mateo Cariño, himself an Ygorrote and a man of more than the average intelligence, has given the correct definition and interpretation of the title "bucknon," as applied and understood among the Ygorrotes; viz: "A man
that lives Comfortably."
270 In short it designates a man whose industry, thrift and superior intelligence has enabled him to raise himself above his fellows, to accumulate wealth, and to improve upon the manners and customs of living of his race; it is a process of evolution and is not the resultant of one man's life, but of a growth extending through generations. It differs materially from the prowess in battle, the slaughter of tribal enemies, and the warlike spirit of savagery that raises the warrior of the American Indian tribes to the position of a chief. This title "bucknon" is in no sense the holding of an office of chiefta-nship, save only as the man whose industry, thrift and superior intelligence accompanied by honesty and integrity, and resulting in the accumulation of wealth, the improvement of manners and customs of living, is invariably looked up to among all people, whether christian or non-christian, and in every grade of civilization, above pure barbarism, as a leader among his fellows and an example for emulation.

It would seem, from the evidence, that this manifests itself among
house†
the Ygorrotes in a better [home]* and a fixed and permanent residence, the construction of fences and permanent improvements upon lands, and, as civilization advances amongst them, as it is now advancing with great rapidity under the wise and generous laws provided by the Commission for the Government of Benguet province, laws interpreted and enforced both in the letter and spirit by Hon. Wm. F. Pack, the present provincial Governor, it now further manifests itself in a desire for the education of their children, that they may be better fitted for an improved social and political status; and for participation in the affairs of their own government under existing laws. In the view of this court the evidence shows that this is the character and status of the "bucknon" Mateo Cariño.

But whatever may be the correct definition and interpretation of the term "bucknon," as used and understood among the Ygorrotes,
either of the present day, or in past generations, it is clear
271 to the court that it can not and does not enter into the questions at issue in this case.

Mateo Cariño seeks to register, under the so called Land Registration Act, the title to a tract of land, to which land he claims owner-

[*Word enclosed in brackets erased in copy.]
[†In pencil in copy.]

ship." If it is a fact that he is the present owner of the land and that he has a legal and valid title thereto, then he is entitled to have it registered whether he is himself a "bucknon," hereditary chiefta-n, or a common laborer; and without reference to whether or not, in some remote period, the ancestors of Mateo Cariño, in their capacity as "bucknons," and when a different definition and understanding of the title "Bucknon" may have existed may have come into possession of these lands by an allotment of the Ygorrotes of that day; all of which suppositions are not proved in this case; are, apparently, incapable of proof in law, and are, at the best, speculative theories, or, as the able Provincial Governor terms them, "Traditionary but authentic."

3rd. In order to clear the record of another matter, so far as it affects the issues in this case, and that there may be no question as to the basis upon which the opinion and decision of this court rests, the court finds it desirable to refer to another matter, appearing in the evidence, and upon which much stress has been laid in the presentation and argument of this case.

It relates to the option contract of purchase and sale executed between one M. A. Clarke, an American resident and business man of Manila and the applicant Mateo Cariño, dated October 3rd, 1901, by the terms of which, under certain conditions therein named, including the obtaining of perfected title in Mateo Cariño, and the payment of certain moneys, etc., the said M. A. Clarke should become the owner of the lands described in applicant's petition. This contract in its entirety will be found in the record, and from the importance that seemed to be placed thereon by the defend-
272 ants it has been made the basis for the finding of facts certain in this opinion. But the view entertained by this Court, as to the effects of this contract upon the issues presented, renders it unnecessary to refer hereto in its conditions in further or greater detail.

This Court cannot see any relevancy of this contract, nor of the examination and cross-examination of the parties in reference thereto, unless it be to substantiate and establish as facts the voluntary conclusions and statements (not evidence nor proof in this case nor so understood by the writer of the letter himself), in the letter of Governor Pack of September 11, 1903, to the Clerk of the Court of Land Registration and hereinbefore referred to. These statements are to the effect, (the essential portions being exactly quoted), that when the American General Bell, during the insurrection "became convinced from his personal observations in other parts of the world, and his experience in the tropics, that in the future it will be inevitable that a great army post for health and recuperation would be established in this mountain province" and, "so thoroughly was he possessed of this idea that he himself selected the land on which the post should hereafter be established," and, "reported these facts to his superior"—that then and thereupon "comes a certain Mr. Clarke, who, taking advantage of the native custom, allotting lands to different chiefs, has this Ygorrote make

a claim of possession of this particular tract of land, which because the military desired it, has become suddenly in his mind valuable."

The learned counsel who argued this case before this court seems to see in this contract and the evidence in reference to the same, in connection with the statements in the Governor Pack letter, some mysterious and fraudulent imposition upon the Ygorrotes in general, and Mateo Cariño in particular, that should be considered by this court in the determination of the issues presented in this case for its decision. The court does not share in the anxiety of the counsel as to the necessity for the protection of the Ygorrote,
273 Mateo Cariño, from "speculators" nor does the court see any thing fraudulent or inequitable in this contract, nor in the negotiation of the same by Mr. Clarke. It seems to be a speculation on the part of Mr. Clarke in all respects legitimate and honorable. So far as this case is concerned neither the option contract, nor the voluntary conclusions and statements quoted from the Governor Pack letter, as to the motives that actuated Mr. Clarke in negotiating this contract serve to influence this Court in any degree in its opinions and conclusions.

The Court sees but two questions, so far as this case is concerned, presented for its decision, aside from that of the jurisdiction of this court, which has been questioned, namely; *Is Mateo Cariño the owner of this land? and; if so, has he a legal and valid title thereto?* If both these questions are answered in the affirmative then Mateo Cariño may at any time grant bargain, sell, convey, encumber or dispose of his ownership and title as he chooses. On the other hand if the United States is the owner of the land and the title thereto is vested in the United States, of the Government of the Philippine Islands, then the option contract is a nullity and Mr. Clarke has not gained, nor has Mateo Cariño lost anything thereunder.

There does not seem to have been a very close distinction drawn in this case, between evidence affecting the issues that courts alone may consider and decide and the evidence, opinions and conclusions, that may be properly directed to a legislative assembly as a basis upon which to ask for remedial legislation authorizing the granting of titles, for instance, to parties having claims only equitable in their nature and arising under treaties of peace and the transfer of sovereignty: and to entertain which, as will be hereafter shown, courts must be specifically granted jurisdiction by the Sovereign power.

Title by Prescription.

The decision of this case in the Court of Land Registration which was favorable to the applicant, was based solely and
274 entirely upon a title by prescription—prescription as against the State (Spain)—Mateo Cariño himself and ancestors having quietly and peaceably occupied and claimed the lands in question under claim of ownership and adversely to all the world for a period of more than forty years during the sovereignty of Spain.

This claim of title has been urged here by the applicant and with great force. It is claimed, that by "decree", decision and code provision, the Government of Spain has recognized title by prescription as against the state" and that this claimant is entitled to have his prescriptive title to the lands in question recognized and confirmed in this action.

Starting upon the theory that title to *State lands in Spain* could be gained by prescription *under the Partidas* (Partida Title 29 Law 7), *and under the Code*, (Civil Code. Articles 1936 and 1932 and 1959); and, that these laws *were also applicable to the lands of the crown in the Philippine Islands* (which includes the lands in question) the applicant claims an absolute title to these lands, as against the United States of America and the Government of the Philippine Islands.

He cites the case of Francisco Aragon Gonzales, decided by the Supreme Court of Spain, April 16, 1881, in which, in answer to the contention of the Ministerial Fiscal, that lands belonging to the State were imperscriptable, the Court says:

"Law 7, Title 29, Par. 3, erroneously cited in the sixth ground of the appeal is not applicable, nor could it have been infringed by the decision, because among other things declared by said law *as not subject* to prescription there is no exemption of real property belonging to the State, which as a *legal personality*, is subject to the prescription of the *common law;* and no exceptions or privileges can be accorded *which the law does not concede.*"

Citing also:

Sanchez Roman Vol. 3 p 277 *et seq.*

The sections of the Civil Code cited, and which Code is now in force in these Islands, except in so far as it may have been replaced or modified by laws passed since the assumption of American sovereignty in these Islands, are as follows:

275 "Art. 1936. "All things which are the object of commerce are capable of prescription."

Art. 1932. "Rights and actions shall extinguish by prescription to the prejudice of all kinds of persons, including judicial persons, in the terms prescribed by law."

Art. 1959. "Ownership and other property rights in real property shall also prescribe by uninterrupted possession of the same for thirty years without the necessity of title nor good faith and without distinction between present and absent persons."

Sections 1932 and 1959, above quoted, are now repealed by American legislation and are not in force. This however does not affect their validity as presented to this Court by applicant's counsel in support of their argument for title by prescription.

Conceding that prescription, as against the State, *was the law within the Kingdom of Spain*, and under such law a title could be sustained to lands of the State within the Kingdom, *it does not follow that such was the law as applied to the lands of the Crown of Spain in the colonies, including the Philippine Islands.*

The policy of Spain, it is true, was to deal liberally with the inhabitants of the Colonies in the matter of Crown lands.

From time to time she passed laws and issued Royal decrees, urging the natives and inhabitants of the Philippine colony to identify themselves with the development of the country and its permanent prosperity, by settling upon and cultivating the public lands and receiving fixed and royal titles of ownership thereto. To that end provisions were made that the occupants and cultivators of the Crown lands in the Philippines must present their proof of occupation and cultivation of Crown lands to the designated officers of the Crown in these Islands and in return they should receive a written evidence of title from the Crown; and threatening to dispossess those occupants and cultivators if they did not comply with these offers of adjustment and composition tendered them as a gift from the sovereign and that their holdings would be sold to others. In these Islands many such royal decrees were from time to time promulgated.

In none of these decrees, applicable to the Philippine Islands,
276 does this court find anything that can be construed as a recognition by Spain in her colonies as a prescriptive title to Crown lands in these Islands; her laws touching lands and record of title in the colonies must be construed together in order to discover her system and policy; and, when so considered to inject into these colonial land laws a doctrine of prescription as against the State for Crown lands seems to be to defeat the clearly expressed object and purpose of her system and policy for the disposal of lands in the Philippines; and which is thus stated by the Colonial Minister, under date of May 22, 1893, in the introduction to the amended Mortgage law, in these words:—"Our mortgage law, which already had a large number of precedents in the Archipelago, can be reformed by slight amendments, which, together with the reform of the provisions regarding the adjustment of royal patrimonies, *will pave the way for the advent of the institutions of credit for lands, which is based on a sound mortgage law, and legally recorded deeds, which define and secure all interests in the land.*"

Had it been the intention of the Ministry to extend to the Philippines the doctrine of prescription as held by the Supreme Court of Spain in the Gonzales Case, it would seem to this Court that the Ministry would have clearly and unequivocally expressed this doctrine, not leaving it in a position of doubt. It is not so clearly expressed in any of the many land laws and Royal decrees defining a colonial land law for the Philippines. On the contrary specific provisions were clearly made in these Islands by which the Crown could be divested of its ownership and the paramount title; and by which such ownership and title should become vested in the subject. These decrees and provisions were far more clear and specific than the loose methods in vogue in the Spanish territories of Louisiana and Florida, acquired by the United States from France and Spain respectively, and which laws and treaties, together with the Acts of

Congress formed the basis of the decisions in the Supreme
277 Court of the United States which decisions and the rules and principles upon which they rest will hereafter be referred to and quoted in this decision. The prescription as against the State

COPY BOUND TO

so far as we can discover was never decided by the Supreme Court of the United States; and, according to our understanding and interpretation of those old laws and treaties, including the United States laws supplemental to the Spanish land laws of these two colonies as enacted by Congress from time to time, we do not see how this question could have been raised; and the objections thereto appear even more clear and specific under the laws in relation to Crown lands that were in force in the Philippine Islands and rights of property protected under the Treaty of Paris.

However this Court must be guided in its opinions upon this question of prescription by the decision of the Supreme Court of the Philippine Islands in the case of *Valentin et al. vs. Murciano* No. 1413, (Official Gazette, No. 22, June 1, 1904). The understanding of this Court is that the Supreme Court of the Philippine Islands has decided adversely to the contention of the applicant on the question of prescription, as urged by him, and this Court follows the evident tenor and conclusions of the Supreme Court in that case.

Justice Willard, in delivering the opinion of the Court, in the case just cited says:—

"Whether in the absence of any special legislation on the subject a general statute of limitations in which the State was not expressly excepted would run against the State as to its public lands we do not find it necessary to decide. Reasons based upon public policy could be adduced why it should not, at least as to such public lands as are involved in this case. (See Act 926, Sect. 67.) We are, however, of the opinion that the case at bar must be decided, not by the general statute of limitation contained in the Partidas, but by those *special laws which from the earliest times have regulated the disposition of public lands in the colonies.*" "Did these special laws recognize any right of prescription against the state as to these lands, and if so to what extent was it recognized?"

And in the comments of the learned Justice in quoting various of these special laws this question is further and directly answered in the following manner:

278 "*But it was necessary*, however, *that action should in all cases be taken by public officials before any interest was acquired by the subject.*"

And, again,

"While the State has always recognized the right of the occupant to a deed if he proves a possession for a sufficient length of time, yet it has always insisted that he *must make that proof before the proper administrative officers, and obtain from them his deed, and until he did that the State remains the absolute owner.*

Also,

"It is apparent that it was not the intention of the law that *mere possessions for a length of time should* make the possessors the owners of the lands possessed by them *without any action on the part of the authorities.* It is plain that they were required to present their claims to the authorities and *obtain a confirmation thereof.*"

In applying the language of the Supreme Court of the Philippine Islands, and as above quoted, to the established facts in the case at

CLOSE IN CENTER

bar we find: that, on the 11th day of April 1899 when, under the treaty of Paris, the holdings and property interests of the Crown and Kingdom of Spain in the Philippine Islands, passed to the United States of America, the Crown of Spain was *the absolute owner of* the lands in question: that Mateo Carino's sole claim or interest therein, if any, was that based only upon the possession and use of the lands as pasture lands for more than thirty years, and, although he had presented his claims to the authorities of Spain in these Islands ha had not *obtained a confirmation thereof.* As will be seen later in this opinion there is evidence which tends to prove that the authorities had *refused to confirm his application for title thereto* and to all intents and purposes *had denied the same.*

The conclusions of the Supreme Court of the Philippine Islands as announced in the opinion of Justice Willard in the case of Valentin *et al. vs.* Murciano above quoted, is in harmony with the principles laid down by the Supreme Court of the United States in cases decided by the latter court and arising under the Louisiana and Florida treaties. At the risk of becoming unnecessarily prolix, and even tedious, this court has of its own motion decided to incorporate in this decision the result of its own examination
279 of these Federal cases upon the subject of lands and titles in conquered and ceded territory.

In this abstract that follows, based upon our examination of the authorities, and with long years of experience and residence in the section of the United States included in the Louisiana purchase, we have endeavored to treat fairly all the interests of the natives of a conquered and ceded territory. To this end we have incorporated the extracts that most strongly favor *the rights of the inhabitants of the* ceded territory. Our Supreme Court of the United States set a high standard in this and the rules and principles laid down therein have furnished a safe guide to our Government ever since, and not only for the judicial branch of the government but also for the administrative and legislative branches. The legislation of the Congress of the United States and of the Philippine Commissions, which laws are presently to be considered, are all based upon these rules and principles—the most liberal and generous that have ever been conceded to any country acquired by virtue of conquest and cession.

Our enquiry is directed and divided into an examination first of the fundamental principles governing a conquered and ceded territory, then the laws in force, the rights of property and the rules for determining the validity of grants and concessions.

Fundamental Principles.

Chief Justice Marshall, in 1823, in the case of Johnston and Graham, lessees, *vs.* McIntosh, 8 Wheaton, 589, laid down this fundamental principle, upon which, as a basis, the subsequent decisions of the Supreme Court of the United States were constructed, extended and elaborated. The language of the eminent jurist is as follows:

COPY BOUND TO

2. The title by conquest is acquired and maintained by force. The conqueror prescribes its limits. Humanity, however, acting on public opinion, has established, as a general rule, that the conquered shall not be wantonly oppressed, and that their condition shall remain as eligible as is compatible with the objects of the
280 conquest. Most usually they are incorporated with the victorious nation and become subjects or citizens of the government with which they are connected. The new and old members of the society mingle with each other; the distinction between them is gradually lost, and they make one people. Where this incorporation is practicable humanity demands, and a wise policy requires, that the rights of the conquered to property should remain unimpaired; that the new subjects should be governed as equitably as the old, and that confidence in their security should gradually banish the painful sense of being separated from their ancient connections and united by force to strangers.

When the conquest is complete, and the conquered inhabitants can be blended with the conquerors, or safely governed as a distinct people, public opinion, which not even the conquerors can disregard, imposes these restraints upon him; and he cannot neglect them without injury to his fame, and hazard to his power."

Laws in Force.

"This government puts itself in place of the foreign sovereigns and became vested with all their rights, subject to their concomitant obligations to the inhabitants; both were regulated by the law of nations according to which the rights of property are protected, even inviolable† in case of a conquered country, and held sacred and [invinciable]* if it is ceded by treaty with or without any treaty to such effect. *And the laws whether in writing or evidenced by the usage and custom of the conquered or ceded country continue in force until altered by the new sovereign.*"

Strother *vs.* Lucas (1838), 12 Peters, 436.

Citing:

Johnson *et al.* Lessee-, *vs.* McIntosh, 8 Wheaton, 589.
Harcourt *et al. vs.* Gaillard *et al.* 12 Wheaton 528.
Henderson *vs.* Poindester's Lessee 12 Wheaton, 535.
United States *vs.* Percheman 7 Peters 86-87.
United States *vs.* Clarke 8 Peters 444.
United States *vs.* Clarke 8 Peters 465.
Delassus *vs.* United States 9 Peters 133.
Mitchell *et al. vs.* United States 9 Peters 734, 747, 748 and 749.
United States *vs.* Fernandez *et al.* 10 Peters 305.
Smith *vs.* United States 10 Peters 330.
Mayor &c New Orleans *vs.* U. S. 10 Peters, 721-2 &-

[*Word enclosed in brackets erased in copy.]
[†In pencil in copy.]

CLOSE IN CENTER

Rights of Property.

(Under Treaty.)

"That when a territory is acquired by treaty, cession or even conquest, the rights of the inhabitants to property are respected and sacred"

State of R. I. *vs.* State of Mass. (1838), 12 Peters 749.

Citing:

Johnson *et al.*, Lessee- *vs.* McIntosh, 8 Wheaton 589.
Henerson *vs.* Poindexter's Lesse-, 12 Wheaton 535.
United States *vs.* Aredodndo *et al.* 6 Peters 712.
United States *vs.* Percheman 7 Peters 86-7.
United States ve. Clarke (1834) 8 Peters 445.
Delassus *vs.* United States 9 Peters 133.
Smith *vs.* United States 10 Peters 330.
Mayor &c New Orleans *vs.* U. S. 10 Peters 718.

(Under Louisiana Treaty.)

281 "The right of property, then, is protected and secured by the treaty; and no principle is better settled in this country, that that an inc*oh*ate title to lands is property. *Independent of treaty stipulations, this right would be held sacred.* The sovereign who acquires an inhabit*a*ted territory, acquires full dominion over it; but this dominion is never supposed to divest the vested rights of individuals to property."

Delassus *vs.* United States, (1835) 9 Peters 133.

(Under Louisiana Treaty.)

"It was never doubted by this court that property of every description in Louisiana was protected by the law of nations, the terms of the treaty and the Acts of Congress; nor that in the term "property" was comprehended every species of title, inc*oh*ate or perfect, embracing those rights which lie in contracts; those which are executory, as well as those which are executed. In this respect the relation of the inhabitants to their government is not changed. The new government takes the place of that which has passed away."

Smith *vs.* United States (1836) 10 Peters 330.

Affirming:

Smith *vs.* United States (1830) 4 Peters 512.

"Inc*oh*ate claims were not changed in their character by the treaty by which Louisiana was acquired. The treaty imposed on the government only a practical obligation to perfect them, *and they cannot be enforced by any action of the Judicial Tribunal.*

Choteau *vs.* Echart 2 How. 344.

The Act of Congress, above referred to, is the Act of the 26th (25th) of May 1824, which, * * * "gives the District Court (Of Missouri) authority to hear and determine all questions arising from any cause brought before it by the petition of any person claiming lands within the State of Missouri * * * by virtue of any French or Spanish grant, concession, warrant or order of survey legally made, granted or issued before the 10th day of March, 1804, by the proper authorities, to any person or persons resident in the province of Louisiana, at the date thereof, or on or before the 10th day of March 1804, and which was protected or secured by the treaty between the United States of America and the French Republic, of the 30th of April 1803 and which might have been perfected into a complete title, under, and in conformity to the laws, usages and customs of the government under which the same originated, had not the sovereignty of the country been transferred to the United States"

9 Peters 132 * * *.

The subject of the waiver of legal rights and the admission of equitable rights and their determination, under Act of Congress, will be noted hereafter in this decision in connection with the Acts of Congress applicable to lands in the Philippines and the jurisdiction of Courts to hear, try and determine such equitable rights to lands, etc.

Rules for Determining Validity of "Grants" and "Concessions."

282 (Under Louisiana Treaty.)

"The language of the treaty ceding Louisiana excluded every idea of interfering with private property; or transfer-ing lands *which had been severed from the Royal domain.* Their right to property remains unaffected by this change."

Delassus *vs.* United States (1835) 9 Peters 135.

"A title" is thus defined in its three essentials:
(1.) The concession is unconditional.
(2.) The land was regularly surveyed, and,
(3.) The party put into possession."

Delassus *vs.* United States, *Supra.*

"We have as uniformly held that in ascertaining what titles would have been perfected if no cession had been made to the United States, we must refer to the general course of the *law of Spain to local usage and custom; and not to what might have been, or, would have been done by the special favor or arbitrary power of the King or his officers.*"

Smith *vs.* United States (1836) 10 Peters 331.

(Under Florida Treaty.)

"It has been distinctly decided, in the Florida cases, that the land claimed *must have been severed from the general domain of the King by some grant which gives it locality by its term-, by a preference to some description, or by* a vague general grant, with an authority to locate afterwards by a *survey making it definite:* which grant or authority to locate must have been made before the 24th of January 1818" and "That where the grant is descriptive a survey in any other place is unauthorized; and that where a survey was made of part of a descriptive grant *before that time,* an order or permission to survey the residue elsewhere, *made afterwards,* is void, in controvention of the terms of the treaty, and the Act of Congress; it *being in effect and substance a new grant, made after the power of the Governor to make grants had ceased.*"

Smith *vs.* United States 91836) 10 Peters 331.

(Under Louisiana Treaty.)

"Until a location was made, it was a mere authority to locate, which he might have exercised at his pleasure, both as to time and place, *by the agency of a public surveyor, authorized to separate lands from the Royal Domain by a survey pursuant to a grant, or order of survey.*

At the time of the cession nothing had been so severed either by a public or private surveyor, or any act done — which the King could be in any way considered as a Trustee for St. Vrain for any portion of the ten thousand arpents * * * *an indispensable pre-requisite to such right* was some act by which his grant would acquire such locality as to attach to some spot; until this was done, the grant could by no possibility have been perfected into a complete title."

Smith *vs.* United States (1836) 10 Peters 333.

"This court has defined property to be a right, legal or equitable, inceptive, incohate or perfect, *which before the treaty with France in 1803 or with Spain in 1819 had so attached to any piece or tract of land, great or small, as to affect the conscience of the former sovereign 'with a trust' and make him a trustee for an in-*
283 *dividual, according to the law of nations, of the sovereign himself, the local usage or custom of the colony or district, according to the principles of justice and rules of equity.*"

Strother *vs.* Lucas (1838) 12 Peters 436.

Citing:—

United States *vs.* Clarke (1834) 8 Peters 450.
United States *vs.* Aredondo *et al.* (1832) 6 Peters 712.
Delassus *vs.* United States (1835) 9 Peters 144.
Choteau's Heirs *vs.* United States (1835) 9 Peters 144.
Mitchell *vs.* United States (1835) 9 Peters 737.
Soulard Heirs *vs.* United States (1836) 10 Peters 105.
Smith *vs.* United States (1836) 10 Peters, 331, 335, 336.

On it appearing that, "No survey was made before the cession of Louisiana to the United States" the grant was denied in

Wherry *et al. vs.* United States (1836) 10 Peters 338.

Affirming,

Smith *vs.* United States (1836) 10 Peters 331 &c. (Florida Treaty).

Particular attention is invited to the following statement:—

"Under the treaty it is true, that grants of land made before the 24th of January 1818, by His Catholic Majesty, or by his lawful authorities, stand ratified and confirmed to the same extent that the same grants would be valid if Florida had remained under the dominion of Spain; and the owners of conditional grants who have been prevented by the circumstances of the Spanish nation, from fulfilling all the conditions of their grants, have time by the treaty extended to them to complete such conditions. That time * * * began to run in regard to individual rights from the ratification of the treaty; and the treaty declares if the conditions are not complied with within the terms limited in the grants, that the grants shall be null and void."

Kingley *vs.* United States (1838), 12 Peters 484.

The quotations from our Supreme Court in the United States need not be further extended, but it should not be overlooked that they must be read in connection with the language of the treaty provisions therein referred to. It is not deemed necessary to repeat them here.

Reverting to the case at bar this court has, upon the evidence, found as a fact, that,

"No action had ever been taken by the Crown of Spain, or by any of its officers, in the nature of a grant, concession or segregation of these lands from the Royal Domain, either by judicial or administrative action, prior to the transfer of sovereignty under the treaty of Paris."

Some such action was an "*indispensable pre-requisite*" in order to divest the Crown of Spain of its title and until such action was taken the State remains "the absolute owner."

This Court cannot escape from the conclusions and accord-
284 ingly holds, that the lands in question were lands belonging to the Royal Domain, and as such, became and were vested under the treaty of Paris in the Congress of the United States and they could not thereafter be disposed of except in such manner and subject to such conditions as the American Congress should provide.

In this view of the case it becomes necessary to see what Congress has provided in reference to the disposition of public lands.

Acts of Congress.

The very first action of Congress was an assertion of this exclusive ownership and right of Congress to provide for the disposition of the

public lands in the Philippines and operated as a bar to any action either judicial or administrative, for the disposal of said lands, of the issuance of any evidence of title thereto by any authority or tribunal in these islands. It is found in the Act of March 2, 1901, in which it was provided *"that no sale or lease or other disposition of the public lands or the timber thereon or the mining rights thereon shall be made.*

Clearly this suspended the operation of all laws affecting the disposition of Crown Lands and public lands in the Philippines until such time as the American Congress should provide therefor. Property rights in land, of whatsoever nature, under the treaty of Paris for which no written evidence of Spanish title existed thereafter depended for their recognition and establishment upon such rules and proceedure as Congress should establish and provide.

The next action of Congress as to the public lands in the Philippines is found in the Act of July 1st 1902 known as "The Philippines Bill."

There is no mistaking the provisions and intent of this Act of Congress, as applied to the public lands of the Philippines. Sections 12, 13, 14, 15 and 16 are as follows:—

285 SEC. 12. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the Treaty with Spain signed December tenth, eighteen hundred and ninety eight, except such land or other property as shall be designated by the President of the United States for Military and other reservations of the Government of the United States, are hereby placed under the control of the Government of said Islands, to be administered for the benefit of the inhabitants thereof except as provided in this act.

SEC. 13. That the Government of the Philippine Islands, subject to the provisions of this act and except as herein provided, shall classify according to its agricultural character and productiveness, and shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands, but such rules and regulations shall not go into effect or have force of law until they have received the approval of the president, and when approved by the President they shall be submitted by him to Congress at the beginning of the next ensueing session thereof and unless disapproved or amended by Congress at said session they shall at the close of such period have the force and effect of law in the Philippine Islands: Provided, that a single homestead entry shall not exceed sixteen hectareas in extent."

SEC. 14. That the Government of the Philippine Islands is hereby authorized and empowered to enact rules and regulations and to prescribe terms and conditions to enable persons to perfect their titles to public lands in said Islands, who, prior to the transfer of sovereignty from Spain to the United States, had fulfilled all or some of the conditions required by the Spanish laws and royal decrees of the Kingdom of Spain for the acquisition of legal title thereto, yet failed to secure conveyance of title; and the Philippine

Commission is authorized to issue patent without compensation, to any native of said Islands, conveying title to any tract of land not more than sixteen hectareas in extent, which were public lands and had been actually occupied by such native or his ancestors prior to and on the thirteenth of August, eighteen hundred and ninety eight.

SEC. 15. That the Government of the Philippine Islands is hereby authorized and empowered, on such terms as it may prescribe, by general legislation, to provide for the granting or sale and conveyance to actual occupants and settlers and other citizens of said Islands such parts and portions of the public domain, other than timber and mineral lands, of the United States in said Islands as it may deem wise, not exceeding sixteen hectares to any one person and for the sale and conveyance of not more then one thousand and twenty four hectares to any corporation or association of persons; Provided, that the grant or sale of such lands whether the purchase price be paid at once or in partial payments, shall be conditioned upon actual and continued occupancy, improvement, and cultivation of the premises sold for a period of not less than five years, during which time the purchaser or grantee can not alienate or encumber said land or the title thereto; but such restriction shall not apply to transfers of rights and title of inheritance under the laws for the distribution of the estates of decedents."

SEC. 16th. That in granting or selling any part of the public domain under the provisions of the last preceding section,
286 preference in all cases shall be given to actual occupants and settlers; and such public lands of the United States in the actual possession or occupancy of any native of the Philippine Islands shall not be sold by said Government to any person without the consent thereto of said prior occupant or settler first had and obtained: Provided, that the prior right hereby secured to an occupant of land who can show no other proof of title than possession, shall not apply to more than sixteen hectares in any one tract."

Under the provisions of this Act of Congress, it will be noted. that in Section 12" all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of Paris," "*except such land or other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States,*" are placed *under the control of the Government of the Philippine Islands,* subject to no limitations whatever save such as are provided in the Act of Congress known as "The Philippines Bill" and the objects and purposes are clearly stated in said trust, viz: "*to be administered for the benefit of the inhabitants hereof.*" (Sec. 12.)

The exceptions and limitations provided in the said Act are substantially these:—

1st. The Government of the Philippine Islands shall classify the public lands according to their agricultural character and productiveness.

2nd. They shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands.

3rd. Before these rules and regulations shall become operative and have the effect of law they shall be (*a*) approved by the President of the United States; (*b*) be submitted by the President, with his approval, to the Congress of the United States at the beginning of the next session for consideration of Congress.

4th. A homestead shall not exceed sixteen hectares.

5th. And should Congress fail to amend such rules and regulations as should be adopted etc., by the Commission, and during the session of Congress at which they were submitted, then and in that case, these rules and regulations should have the *"force and effect*
287 *of law in the Philippine Islands."*

These exceptions and limitations are found in Sect. 13, above quoted.

The rules and Regulations were adopted by the Commission; they were approved by the President of the United States; they were duly submitted by the President to Congress; that body adjourned without taking action thereon, and, on the 26th day of July 1904, by the proclamation of the then Civil Governor these "Rules and Regulations," *become operative in these Islands.* These Rules and Regulations, of course, are embodied in Act No. 926 of the U. S. Philippine Commission, enacted, October 7th 1903, and hereafter referred to.

The remaining Sections quoted (Sects. 14, 15, and 16) confer other and further powers on the Government of the Philippine Islands over the public lands, and also contain other and further limitations.

The rights of property in land, not evidenced by written title, which may have accrued under the treaty of Paris as an obligation of the United States according to the rules of interpretation laid down by the Supreme Court of the United States in the numerously cited decision found in earlier pages of this opinion, are provided for in Sections 14.

By that Section, in addition to the rules and regulations provided for in Section 13, which former rules and regulations require the express approval of the President of the United States and the express or implied approval of Congress, the Government of the Philippines is further authorized and empowered *"to enact rules and regulations and to prescribe terms and conditions to enable persons to perfect their titles to public lands in said Islands who prior to the transfer of sovereignty had fulfilled all or some of the conditions required by the Spanish laws and royal decrees of the Kingdom of Spain for the acquisition of legal titles thereto, yet failed to secure conveyance of title."* The Philippine Commission is also authorized to grant a title without any compensation to any native who
288 had *"actually occupied"* lands by himself or his ancestors prior to August 13th 1898; this amount being limited to sixteen hectares.

By Section 15 and Section 16 of sale are granted to the Commission to *"actual occupants and settlers"* and certain *"prior rights of purchase"* are provided; and the Philippine Government is prevented from selling lands in such actual occupancy of settlers until such settlers and occupants shall have consented thereto or forfeited by laches their preference rights. The limit of sales provided

by these sections is sixteen hectares to each individual, and at the close of the section (Sect. 16) providing for preference rights of purchase "to actual occupants and settlers" this proviso is found: "Provided that the prior right hereby secured to an occupant of land who can show no other proof of title than possession shall not apply to more than sixteen hectares in any one tract."

It is needless in view of the facts found upon this trial to discuss here the question of "prior rights" given under this Act of Congress "to actual occupants and settlers" since the lands in question cannot possibly come within the purview of such law. The Philippine Commission has, however, exercised the power vested in it by the Sections 14, 15 and 16, and the Rules and Regulations provided for in Section 14 will be found in the same Act No. 926 hereinbefore quoted.

The Government of the United States has thus provided for actual occupants and settlers upon the public domain and this Act of Congress conclusively provides that no native of these Islands, however poor and humble, can be deprived of his home and holdings on the public lands to the full extent of a homestead of sixteen hectares. The Government of the Philippine Islands in Act No. 926, have carefully guarded and safeguarded each and every one of these rights and have gone to the very limit of liberality and generosity — construing the provisions above quoted to protect the actual occupants and native settlers and both Congress and the Philip-
289 pine Commission have legislated in such a manner as to more than meet every treaty obligation of the General Government of the United States with Spain touching property rights in land in the Philippines.

Congress has placed the seal of its approval upon Chapter VI of said Act No. 926 of the Act of the Philippine Commission, which chapter is entitled, "Unperfected Titles and Spanish Grant and Concessions"; by virtue of which chapter the Court of Land Registration is given jurisdiction by a procedure expressly provided in said chapter and in some essential particulars varying from the procedure provided in Act No. 496 of the U. S. Philippine Commission, organizing said Court and defining its original jurisdiction and proceedure. The persons who may so apply are specifically described together with the conditions precedent to entitle them to make such application in Sect. 54 of *of* said Chapter VI of Act 926; and among the number thus described are those "who were entitled to apply and did apply for adjustment or composition of title to lands against the Government under the Spanish laws and royal decress in force prior to the royal decree of February thirteenth, eighteen hundred and ninety four, but who failed to receive title therefor through no default upon their part"; as well also, "All persons who were entitled to a gratuitous title to public lands by possessory proceedings under the provisions of articles nineteen and twenty of the royal decree of the King of Spain issued February thirteenth, eighteen hundred and ninety four, and who, having complied with all the conditions therein required, failed to receive title therefor

through no default upon their part", and others, not necessary for the purpose of this case to be quoted.

It is unnecessary to quote in extenso from the provisions made by the Congress of the United States (as contained in Act No. 926 of the Philippine Commission) which now has the force and effect of law in these Islands, as provided in "The Philippines Bill." The applicant's petition has not been presented under the pro-
290 visions of this law, and it is unnecessary for this Court to decide and determine what if any rights he might have if such rights were presented to this Court by virtue thereof. Sect. 78, of Act. No. 926 reads as follows:

Sect. 78. The provisions of this Act shall extend and apply to all provinces and places of the Philippine Archipelago, except the Moro Province, and the Provinces of Lepanto-Bontoc, Benguet, Paragua and Nueva Vizcaya; but the provisions of this Act or of any chapter hereof may at any time by resolution of the Philippine Commission be extended over and put in force in any of the provinces or any part thereof hereby excepted from its operations."

No portion of said Act has, as yet been extended to the province of Benguet except Chap. 5 on townsites, and as these lands in question are situated within the said province of Benguet, Mateo Cariño, the applicant has acquired no rights up to this time under the provisions of said Act. As already stated this Court finds it unnecessary to decide or even express an opinion as to whether any rights could ever be acquired by him under the law.

The Sanitarium Reservation.

In connection with the claim of this applicant to the land in question the following considerations, in connection with the subject just discussed, are disclosed by the evidence and are pertinent.

The Government of the Philippine Islands and the Government of the United States have both taken steps to establish a Sanitarium at Baguio in the Province of Benguet; and by Act No. 297, approved November 11, 1901, the former government provided the funds for the purchase of eighty acres of land and sundry improvements thereon (whatever may have been the title or interest this court has no knowledge nor is it of importance) of one Otto Scherer, and in furtherance of the design of the Commission for a summer Capitol and Sanitarium at Baguio. And on adjacent territory or ground on the 10th day of October 1903 the Government of the United States set aside a tract of land for a military post and a military reservation which reservation included all or a larger portion of the land in question.

The evidence in this case also discloses that the propo-
291 sition for an extensive San-tarium and reservation of lands therefor in Benguet (near Baguio) was not a proposition originating with the American Government in these Islands, nor since the American occupation of these Islands. It had its origin during the days of Spanish sovereignty. It appears that in the

month of July 1895, there was received from the Politico-Military Comandancia of Benguet through the Dirección Civil and the regular official channels for the transmission of such documents to the then General Government of these Islands two petitions from one Mateo Cariño and one each from Ygorrotes shown by the evidence herein to be occupants of tracts adjoining the land in question asking for adjustment and composition for the lands described therein. The lands described in said petitions, both and all of which were dated July 5, 1895, is not specifically described, nor have the petitions themselves been discovered in any of the Archives of to-day although diligent search has been made.

See Defendant's Exhibit "E".

This exhibit corroborates the testimony of Mateo Cariño as to his having presented an application for the adjustment and composition of the land in question at or about the date and thus is taken as proved. This also indicates clearly that the paramount title to this land on July 5, 1905, was recognized by the claimant as vested in the Crown of Spain.

By defendant's Exhibit "F" it is disclosed that on the 18th day of September 1897, there was received through official channels in the Forestry Bureau at Manila for transmission to the Politico-Military Comandancia of Benguet an official notification emenating from the office of the Secretary of the Governor General of the Spanish Government in Manila, and under date of September 16th 1897, and giveing notice to all persons concerned (whether communicated to Mateo Cariño or not the evidence does not disclose) that under no consideration would adjustment and composition for lands in Benguet be considered and evidences of title thereto issued until such times as the Government should designate in a
292 definite manner the lands which the Sanitarium with its dependencies should occupy. This official letter like the petition of the applicant above referred to is not produced nor found in the Government Archives save only in the abstract just quoted.

The inference is inevitable that the Government of Spain was holding all lands to which title had not been issued and situate in the province of Benguet in reserve pending the selection and designation of the lands that it required for public purposes. This was the status of Mateo Cariño and his lands in 1897; what recognition of his claims might have been made or what compensation if any he might have received is a matter of speculation only, but one thing is certain Spain, the owner of the paramount title, denied a title to Mateo Cariño and other Ygorrotes claiming land by possession in the Province of Benguet by virtue of occupation and possession alone, and in the absence of a written title based upon adjustment nor is his condition† and composition under Spanish Royal decrees [is]* changed at this

[*Word enclosed in brackets erased in copy.]
[†In pencil in copy.]

time; save that an actual occupant or settler has his holdings not exceeding sixteen hectares guaranteed to him by the Congress of the United States. Under this guarantee Mateo Cariño has no claim to the land in question since he is not and for many years has not been an actual occupant or settler on the lands in question; it is at the most pasture land and as such is claimed.

Proceedings under the Mortgage Law.

The view that this court takes of the effect of the Act of Congress of March 2, 1901, renders it unnecessary to further consider here the effect of the proceedings had in the Court of First Instance of Union and Benguet under the Mortgage Law; and it has not been urged or presented here for any other purpose apparently than as proof of possession for many years, a fact which is abundantly established by other evidence.

The Military Reservation.

This Court having held that the land in question in this action was at the date of the ratification of the treaty of Paris Crown Lands and as such passed to the Congress of the United States, and
293 Congress having provided for its reservation for Military purposes and thus exempted it from the provisions of Act No. 926 and the "Philippines Bill" the right to the registration of a title thereto based upon prescription only does not appertain to the jurisdiction of the Courts nor is the authority to grant a title thereto vested in the Philippine Commission. If the applicant has any rights thereto his sole remedy is an appeal to the Congress of the United States.

Jurisdiction of this Court.

Since the lands in question were Crown lands of Spain when the sovereignty of the United States over these Islands was acquired from Spain, and as such, passed to the United States as the absolute owner, and free from any equitable claims acquired by the claimant Mateo Cariño, and his ancestors under the Spanish sovereignty which equitable claims might have been recognized by the Crown of Spain, resulting in the issuance to Mateo Cariño of a crown patent and title thereto: Since no such action was taken by the Crown officers and by Sect. 78 of Act 926 of the U. S. Philippine Commission, which Act has received the approval of Congress and has the effect of law, the provisions of said Act have not yet been extended to the Province of Benguet it necessarily follows that, until such time as the United States Philippine Commission or the Congress of the United States shall otherwise provide, neither the Court of Land Registration nor this Court as an appellate Court, has any jurisdiction to grant to the applicant the relief prayed for in his petition. Whatever equitable claims, if any he may have, are subjects to be

COPY BOUND T

considered by the legislative assemblies of the Islands and of the Congress of the United States and these equities if any can not be adjudicated and created into titles and grants by the action of the Courts, the land in question being undoubtedly public lands such a jurisdiction must be specially and specifically conferred by Congress or by the U. S. Philippine Commission (within the limits and subject to the limitations of the Act of Congress of July 1, 1902).

No such legislation has been had.

294 In delivering the opinion of the Supreme Court of the United States in the case of Burgess *vs.* Gray, 16 How. (U. S.) 62, the Court says:

"Now as regards any equitable and inc*oh*ate title which the petitioner may possess under the treaty with France, it is quite clear that the State Court has no jurisdiction over it. For it has been repeatedly held by this court that, under that treaty, no inc*oh*ate or imperfect title derived from the French or Spanish authorities can be maintained in a court of justice *unless jurisdiction to try and decide it has first been conferred by Act of Congress.* Certainly no such jurisdiction has been given to any state court. And the Supreme Court of Missouri were right in sustaining the demuerer, as to this part of the petition, even if it had been of opinion, that the permit to settle on the land *and the long possession of it under the Spanish Government, gave him an equitable right, by the laws of Spain, to demand a perfect and legal title.* The court has no jurisdiction upon the question and the judgment of the State Court cannot be reversed unless the plaintiff can show that he had complete and perfect title derived from the Spanish or French authorities; or a legal or equitable title under the laws of the United States."

See also,

Alexander *vs.* Roulet, 13 Wall 386.
Doran *vs.* C. P. Ry. Co., 24 Cal. 258.
Brees *vs.* Louviere, 37 La. An. 736, 739.
Gibson *vs.* Choteau, 13 Wall 92.

The special defenses presented by the Government of the United States and the Government of the Philippine Islands are both well taken and this Court has no jurisdiction to entertain this petition of Mateo Cariño nor to grant the relief therein prayed for.

The Court therefore disallows the prayer of the petition and orders that the same be dismissed with costs of both courts.

Done in open court this 4th day of April 1905, at Baguio in the Province of Benguet, P. I.

CHARLES H. BURRITT,
Judge Mountain District.

295 to which judgment the applicant then and there duly excepted.

Thereupon the applicant filed a motion in the above entitled cause requesting the Court to amplify its finding of fact so as to include therein the value of the land in question. Said motion was granted, and the Court made an additional finding of fact to the

CLOSE IN CENTER

effect that the value of the land here in controversy is twenty-five thousand dollars and upwards, U. S. currency.

Within the time required by law, the applicant filed a motion for a new trial of said action on the ground that the findings of fact were plainly and manifestly against the weight of evidence; that the decision and judgment of the Court was contrary to law, which motion was overruled by the said Court, to which ruling and decision of the Court the applicant then and there duly excepted, and gave a notice of an intention to appeal and perfect a bill of exceptions to the Supreme Court of the Philippine Islands. Upon the application of the applicant the Court extended the time to prepare and serve a bill of exceptions to and including 22nd day of May, 1905.

The applicant, by his counsel, on the — day of May, 1905, and within the period allowed by law for the presentation of the bill of exceptions, and during the term in which said judgment was rendered, presents this bill of exceptions to the Judge of the Court and asks that the same be approved, perfected, allowed and signed by the Judge of said Court.

Manila, P. I., May 19, 1905.

COUDERT BROTHERS,
JOHN W. HAUSSERMANN,
CHARLES C. COHN,
D. R. WILLIAMS,
Attorneys for Applicant.

296 Copy of the foregoing bill of exceptions received by the undersigned this 19th day of May, 1905.

A. BASSETT,
Attorney for the Government of the United States of America.

A. BASSETT,
Attorney for the Government of the Philippine Islands.

I hereby certify that on this 22nd day of May, 1905, at 9 a. m. there has been received in this office the preceding writing.

WM. M. BROWER,
Escribano,
Por LUCIO ALOGAN,
Delegado Clerk Court First Instance of Benguet.

UNITED STATES OF AMERICA, *Philippine Islands:*

Mountain Judicial District.

Court of First Instance of the Province of Benguet.

The above Bill of Exceptions is hereby certified to be true and correct.

CHARLES H. BURRITT,
Judge Mountain Judicial District Court of First Instance, Province of Benguet, P. I.

COPY BOUND

Filed in the Clerk's office of the Supreme Court of the Philippine Islands this 29 day of May, 1905.
J. E. BLANCO, *Clerk*,
By H. D. McGEORGE, *Deputy*.

10-40 a. m.

297 After hearing upon the preceding record the Supreme Court of the Philippine Islands rendered the following decision:

(No. 2746. December 6, 1906.)

MATEO CARIÑO, Petitioner and Appellant,
vs.
THE INSULAR GOVERNMENT, Respondent and Appellee.

1. Public Lands; Prescription; Statute of Limitations.—The statute of limitations did not run against the Crown of Spain as to its public agricultural lands in these Islands, following Valenton *et al. vs.* Murciano, and other cases.
2. *Id.; id;* Presumption of Grant.—There is in these Islands no conclusive presumption of a grant from the Grovernment founded merely upon long possession.
3. *Id.; id.;* Public Land Act.—Act No. 926, section 54, paragraph 6, is not applicable to this case.

Appeal from a Judgment of the Court of First Instance of Benguet.

The facts are stated in the opinion of the Court.
Coudert Brothers, for appellant.
Attorney-General Wilfley, for appellee.

WILLARD, *J.:*

The appellant, on the 22nd of June, 1903, by his attorney in fact, Metcalf A. Clarke, filed a petition in the Court of Land Registration asking that he be inscribed as the owner of a tract of land in the municipality of Baguio, in the Province of Benguet, containing 146 hectares. The Government of the Philippine Islands appeared in the Court of Land Registration and opposed the petition. The Government of the United States also appeared and opposed the petition on the ground that the land was part of the military reservation of Baguio. Judgment was entered in the Court of Land Regis-
298 tion in favor of the petitioner, from which judgment the defendants appealed in accordance with the law then in force to the Court of First Instance of the Province of Benguet. The case was therein tried *de novo*, and judgment was entered dismissing the petition. The petitioner has brought the case here by bill of exceptions.

The petitioner presented no documentary evidence of title, except a possessory information obtained in 1901. By the provisions of the

CLOSE IN CENTER

Mortgage Law, under which the possessory information was obtained (art. 394), it produced only those effects which the laws give the mere possession.

The petitioner not having shown any title from the Government, and the land being agricultural, the case is governed by the decision of this Court in the cases of Valenton *et al. vs.* Murciano (2 Off. Gaz., 434, No. 22), Casino *et al. vs.* Valdez *et al.* (No. 2468, decided July 16, 1905), and Tiglao *vs.* The Insular Government (No. 2498, just decided). In these cases it was held that the mere possession of land such as that in controversy in this case would not give the possessor any title thereto as against the Government. In other words, that the statute of limitations did not run against the *the* State in reference to its agricultural lands.

The petitioner, however, insists that although the statute of limitations as such did not run against the Government of Spain in the Philippine Islands, yet a grant is to be conclusively presumed from immemorial use and occupation. To say that the presumption of a grant is a presumption of law is, in our opinion, simply to say that it amounts to a statute of limitations; and for a court to hold that the statute of limitations does not run against the Govern-
299 ment as to its public agricultural lands, and at the same time to hold that if a person has been in possession of such lands for thirty years it is conclusively presumed that the Government has given him a deed therefor, would be to make two rulings directly inconsistent with each other.

Considered as a presumption of fact, the contention could not be sustained in this particular case. Here the surrounding circumstances are incompatible with the existence of grant. It is known that for nearly three hundred years all attempts to convert the Igorots of the Province of Benguet to the Christian religion completely failed, and that during that time they remained practically in the same condition as they were when the Islands were first occupied by the Spaniards. To presume as a matter of fact that during that time, and down to at least 1880, the provisions of laws relating to the grant, adjustment, and sale of public lands were taken advantage of by these uncivilized people and that they applied for and obtain- deeds from the Government for these lands, would be to presume something which did not exist. The appellant says in his brief (p. 10):

The Igorot, no less than the American Indian, is an aborigine, and is equally ignorant of the forms of law and procedure necessary to protect his interests.

There is, moreover, in the case evidence that in 1894 the petitioner sought to obtain title from the Government in accordance with the laws then in force. In 1901 he made a contract with Metcalf A. Clarke, by the terms of which he agreed to sell the land to Clarke for P6,000 when he obtained title thereto from the Government, and in this contract he does not say that he is the owner, but simply that he is in possession thereof. The court below found that the land is now worth upwards of P50,000.

300 The possession of the land has not been of such character as to require the presumption of a grant. No one has lived

COPY BOUND TO

upon it for many years. It was never used for anything but pasturage of animals, except insignificant *portion* portions thereof, and since the insurrection against Spain it has apparently not been used by the petitioner for any purpose.

The petitioner relies upon the case of The United States *vs.* Chavez (159 U. S., 452) and the case of The United States *vs.* Chavez (175 U. S., 509). In the case of Hays *vs.* The United States (175 U. S., 248) the court said at page 261:

But this presumption is subject to the limitation that where title is claimed from a deed which is shown to be void, it will not be presumed that there was an independent grant (Smith *vs.* Highbee, 12 Vermont, 113), or where surrounding circumstances are inconsistent with the theory of a grant (Townsend *vs.* Downer, 32 Vermont, 183).

The substance of this doctrine is that lapse of time may be treated as helping out the presumption of a grant, but where a void grant is shown, it affords no presumption that another valid grant was made. Nor does such presumption arise of the surrounding circumstances are incompatible with the existence of a grant. In the case under consideration we can not find any evidence which justifies in believing that a legal grant can have been made, and under the circumstances we can not consider possession since the date of the treaty as dispensing with the requirement that the title, if not perfect at that time, was one which the claimant would have had a lawful right to make perfect, had the territory not been acquired by the United States.

In the case of Chavez *vs.* The United States (175 U. S., 552) the court made the following statement:

Finally, it distinctly appears that the possession of the parties is insufficient in length of time to prove a valid title. In United States *vs.* Chavez (159 U. S., 452) the possession was under the claim of a grant made by the Governor of New Mexico to the alleged grantees. The grant had been lost, but it has been seen and read by the witnesses, and its existence had been proved by evidence sufficient, as was stated in the opinion (p. 460), to warrant "the finding of the Court below that the complainant's title was derived from the Republic of Mexico, and was complete and perfect at the date when the United States acquired sovereignty in the territory of New Mexico within which the land was situated." We do not question the correctness of the remarks made by Mr. Justice Shiras in regard to evidence of possession and the presumptions which may under certain circumstances be drawn as to the existence of a grant.

301 We do not deny the right or the duty of a court to presume its existence in a proper case, in order to quiet a title and to give to long continued possession the quality of a rightful possession under a legal title. We recognized and enforced such rule in the case of United States *vs.* Chavez, decided at this term, in which the question is involved. We simply say in this case that the possession was not of a duration long enough to justify any such inference.

There is no proof of any valid grant, but on the contrary the evidence offered by the plaintiff himself and upon which he bases the title that he asks the court to confirm, shows the existence of a grant

CLOSE IN CENTER

from a body which had no legal power to make it, and which, therefore, conveyed no title whatever to its grantee, and the evidence is, as given by the plaintiff himself, that it was under this grant alone that possession of the lands was taken. We cannot presume (within the time involved in this case) that any other and valid grant was ever made. The possession of the plaintiff and of his grantors up to the time of the treaty of Guadalupe Hidalgo, in 1848, had not been long enough to presume a grant. (Crespin *vs.* United States, 168 U. S., 208; Hayes *vs.* United States, 170 U. S., 637, 649, 653; Hays *vs.* The United States, ante, 248.) The possession subsequently existing, we can not notice. Same authorities.

As we understand it, it is well settled in the United States that prescription does not run against the Government as to its public lands—in other words, that if a person desires to obtain title to the public lands of the United States situated within the boundaries of the States, he must do so in the way pointed out by the law. We do not understand that a person in possession of unsurveyed public land in the State of Minnesota, for example, whose ancestors had occupied that land for forty years, could maintain in court a claim that he was the legal owner of the lands by reason of the presumption that the United States had granted the land to his ancestors, a presumption founded not upon any proceedings taken in the General Land Office to acquire a patent thereto, but upon the mere possession for that length of time.

The same is true of the public lands of Spain in the Philippine Islands. In the case of Valenton *et al. vs.* Murciano it was said:

> While the State has always recognized the right of the occupant to a deed if he proves a possession for a sufficient length of time,
> 302 yet it has always insisted that he must make the proof before the proper administrative officers, and obtain from them his deed, and until he did that the State remained the absolute owner.

But in any event, and whatever the law may be elsewhere, it seems clear that this doctrine of presumptive grant can not apply to the Philippines in view of the Spanish legislation for the Indies. From time to time there were promulgated laws which required the persons in possession of public lands to exhibit their titles or grant thereto. If these titles or grants were found to be good, they were confirmed, but if they were not, or if the persons had no grants or titles at all, they were evicted from the land. For example, in law 14, title 12, book 4, Recompilation of the Laws of the Indies, it is stated:

> We therefore order and command that all viceroys and presidents of pretorial courts designated, at such times as shall to them seem most expedient, a suitable period within which all possessors of tracts, farms, plantations, and estates shall exhibit to them and to the court officers appointed by them for this purpose, their title deeds thereto. And those who are in possession by virtue of proper deeds and receipts or by virtue of just prescriptive rights shall be protected, and all the rest shall be restored to us to be disposed of at our will.

In the royal cedula of October 15, 1754, it was provided—

> that any and all persons who, since the year 1700, and up to the date of the promulgation and publication of said order, shall have occupied royal lands, whether or not the same shall be cultivated or

COPY BOUND T

tenanted, may, either in person or through their attorneys or representatives, appear and exhibit to said subdelegates the titles and patents by virtue of which said lands are occupied. Said subdelegates will designate as the period within which such documents must be presented a term sufficient in length and proportionate to the distance the interested party may have to travel for the purpose of making the presentation. Said subdelegates will at the same time warn the parties interested that in case of their failure to present their title deeds within the term designated, without a just and valid reason therefor, they will be deprived of and evicted from their lands, and they will be granted to others.

In the regulations of June 25, 1880, it was provided as follows:

Art. 8. If the interested parties shall not ask an adjustment of the lands whose possession they are unlawfully enjoying within
303 the time of one year, or, the adjustment having been granted by the authorities, they shall fail to fulfill their obligation in connection with the compromise, by paying the proper sum into the treasury, the latter will, by virtue of the authority vested in it, reassert the ownership of the State over the lands, and will, after fixing the value thereof, proceed to sell at public auction that part of the same which either because it may have been reduced to cultivation or is not located within the forest zone is not deemed advisable to preserve as State forest reservations.

In the royal decree of the 13th of February, 1894, published in the Official Gazette of Manila of the 17th of April, 1894, it is provided in article 4 as follows:

Art. 4. The title to all agricultural lands which were capable of adjustment (composicion) under the royal decree of the 25th of June, 1880, but the adjustment of which has not been sought at the time of the promulgation of this decree in the Gaceta of Manila, will revert to the State. Any claim to such lands by those who might have applied for the adjustment of the same, but who have not done so at the above mentioned date, will not avail them in any way or at any time.

In view of these provisions of the law, it seems to us impossible to say that as to the public agricultural lands in the Philippines there existed a conclusive presumption after a lapse of thirty or any other number of years that the Government of Spain had granted to the possessor thereof a legal title thereto.

The plaintiff is not entitle- to the benefits of paragraph 6 of section 54 of Act No. 926, the Public Land Act, for the reason that that act is not applicable to the Province of Benguet. The judgment of the court below is affirmed, with the costs of this instance against the appellant.

After the expiration of twenty days, let judgment be entered accordingly, and ten days thereafter the case will be returned to the Court below for execution. So ordered.

Arellano, C. J., Torres, Carson, and Tracey, JJ., concur.

Mapa, J., concurs in the result.

Judgment affirmed.

CLOSE IN CENTER

304 UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

Judgment Book 4, f—, Registry No. 2746.

MATEO CARIÑO, Plaintiff and Appellant,
vs.
THE INSULAR GOVERNMENT, Defendant and Appellee.

Judgment. December 28, 1906.

This Court, being possessed of due power and authority to hear the above entitled cause, which has been submitted by both parties for determination, and having considered the same in the light of the Record and, on the 6th day of December, 1906, having rendered its decision and entered its order for judgment, therefore.

By virtue of the said order, the judgment appealed from the Court of First Instance of Benguet dated April 4, 1905, is hereby affirmed with costs on the appellant.

It is further ordered that the defendant recover from the plaintiff costs in the sum of $40.00.

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.
(Court Stamp.)

305 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

R. G. 2746.

MATEO CARIÑO, Plaintiff and Appellant,
vs.
INSULAR GOVERNMENT, Defendant and Appellee.

To the Attorney General of the Philippine Islands:

Please take notice that on Monday, the 31st day of December, 1906, at 9:00 o'clock A. M., or as soon thereafter as counsel can be heard, the accompanying petition for a writ of error in the above entitled cause will be presented for the consideration of the Court.

Manila, P. I., Dec. 29, 1906.

COUDERT BROTHERS,
JOHN W. HAUSSERMANN,
CHARLES C. COHN,
D. R. WILLIAMS,
H. W. VAN DYKE,
Attorneys for Appellant.

Service of the above notice hereby accepted this 29 day of December, 1906.

R. D. BLANCHARD,
Ass't Att'y, Bureau Justice.

COPY BOUND T

306 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

R. G. 2746.

MATEO CARIÑO, Plaintiff and Appellant,
vs.
INSULAR GOVERNMENT, Defendant and Appellee.

Petition for Writ of Error.

And now comes Mateo Cariño, the plaintiff herein, and says:

That on or about the 28th day of December, 1906, the Supreme Court of the Philippine Islands entered a judgment herein in favor of the defendant and against the plaintiff, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore this plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

COUDERT BROTHERS,
JOHN W. HAUSSERMANN,
CHARLES C. COHN,
D. R. WILLIAMS,
H. W. VAN DYKE,
Att'n'ys for Appellant.

Service of the foregoing petition acknowledged this 29 day of December, 1906.

R. D. BLANCHARD,
Ass't Att'y, Bureau of Justice, for Attorney General.

307 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

R. G. 2746.

MATEO CARIÑO, Plaintiff and Appellant,
vs.
INSULAR GOVERNMENT, Defendant and Appellee.

Assignment of Error.

The plaintiff in this action, in connection with his petition for a writ of error, makes the following assignment of errors upon which

CLOSE IN CENTER

he will rely for the prosecution of the writ of error in the above entitled cause:

I.

The court erred in holding that prescription did not run against public agricultural lands of the Kingdom of Spain in the Philippine Islands during Spanish sovereignty.

II.

The court erred in holding that a grant of title of public agricultural lands in the Philippine Islands could not be presumed from immemorial use and occupation.

III.

The court erred in holding as a conclusion of law from the facts of record that title to the land involved in this proceeding had not vested in the plaintiff.

308 IV.

The Court erred in holding that Mateo Cariño, plaintiff herein, was not the owner in fee simple of the land involved in this proceeding, and was not entitled to its registration under the provisions of the Land Registration Act of the Philippine Islands.

V.

The court erred in affirming the decision of the trial court ordering the dismissal of plaintiff's application.

COUDERT BROTHERS,
JOHN W. HAUSSERMANN,
CHARLES C. COHN,
D. R. WILLIAMS,
H. W. VAN DYKE,
Attorneys for Plaintiff and Appellant.

309 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

R. G. 2746.

MATEO CARIÑO, Plaintiff and Appellant,
vs.
INSULAR GOVERNMENT, Defendant and Appellee.

Order Allowing Writ of Error.

This 4th day of January 1907, comes the plaintiff, by his attorneys, and files herein and presents to the court his petition praying for the allowance of a writ of error and assignment of errors intended to be urged by him, praying also that a transcript of the

COPY BOUND T

record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had which are proper in the premises.

On consideration whereof the court does allow the writ of error upon the plaintiff giving bond according to law in the sum of $500.00, U. S. Currency, to cover costs.

CHARLES A. WILLARD,
Associate Justice Supreme Court, Philippine Islands.

310 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment in a case which is in the said court before — or some of you, wherein Mateo Cariño, of the Province of Benguet, appears as plaintiff, and the Insular Government of the Philippine Islands, as defendant, a manifest error has happened to the great damage of the said Mateo Cariño as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the plaintiff aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, directly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you may have the same in Washington on the thirtieth day of April, next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 4th day of January,
311 in the year of our Lord one thousand nine hundred and ——.

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

The foregoing writ of error is allowed.

CHARLES A. WILLARD,
Associate Justice of the Supreme Court of the Philippine Islands.

312 THE UNITED STATES OF AMERICA, *ss:*

To the Attorney General of the Philippine Islands, Greeting:

You are hereby cited and admonished to appear at the Supreme Court of the United States, to be holden at the City of Washington on the 30th day of April, next, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the United States, wherein

CLOSE IN CENTER

Mateo Cariño, of the Province of Benguet, is plaintiff in error, and the Insular Government is defendant, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected and speedy justice be done to him in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 4th day of January, in the year of our Lord one thousand nine hundred and seven.

CHARLES A. WILLARD,
Associate Justice of the Supreme Court of the Philippine Islands.

Receipt of above citation is hereby admitted and service thereof accepted this 4 day of December, 1906.

GEO. R. HARVEY,
Ass't Attorney General.

313 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

R. G. 2746.

MATEO CARIÑO, Plaintiff and Appellant,
vs.
INSULAR GOVERNMENT, Defendant and Appellee.

Bond on Writ of Error.

Know all men by these presents, that we, Metcalf A. Clarke, attorney in fact for Mateo Cariño, as principal, and John W. Haussermann and J. R. Reed, as sureties, are held and firmly bound unto the Government of the Philippine Islands in the full and just sum of Five Hundred (500) Dollars, United States Currency, for the payment whereof to the Government of the Philippine Islands we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 4th day of January, 1907.

Whereas, lately at a session of the Supreme Court of the Philippine Islands in a suit pending in said court, wherein Mateo Cariño was plaintiff and the insular Government of the Philippine Islands, defendant, a judgment was rendered against said plaintiff, and said plaintiff having obtained a writ of error and filed a copy thereof in the Clerk's Office of said court to reverse the judgment in the
314 aforesaid suit, and a citation directed to the said Insular Government, through the Attorney General thereof, citing and admonishing him to be and appear at a certain session of the Supreme Court of the United States to be holden at the City of Washington during the April, 1907, term of said court.

Now, the condition of the above obligation is such that if the said Mateo Cariño shall prosecute said writ of error to effect and answer

COPY BOUND T

all costs that may be awarded against him if he fails to make good his plea, then the above obligation to be void; otherwise to remain in full force and effect.

METCALF A. CLARKE.
JOHN W. HAUSSERMANN.
J. R. REED.

Sealed and delivered in the presence of:—
D. R. WILLIAMS.
A. W. BEAM.

UNITED STATES OF AMERICA, *Philippine Islands, ss:*

At the City of Manila, John W. Haussermann and J. R. Reed, sureties on the within obligation, being duly sworn, depose and say, each for himself, that he is a resident and property holder in the City of Manila, and that he is worth more than the amount ex-
315 pressed in the said obligation as a penal sum, over and above all his debts and obligations exclusive of property exempt from taxation.

JOHN W. HAUSSERMANN.
J. R. REED.

Subscribed and sworn to before me this 4th day of January, 1907, exhibiting Cedulas No. B175128, dated Mar. 24, 1906, and No. A-1134, dated Jan'y 4, 1907, respectively, issued in Manila.

D. R. WILLIAMS,
Notary Public.

My Commission Expires December 31st 1908.

The within bond approved by
CHARLES A. WILLARD,
Associate Justice of the Supreme Court of the Philippine Islands.

316 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

R. G. 2746.

MATEO CARIÑO, Plaintiff and Appellant,
vs.
THE INSULAR GOVERNMENT, Defendant and Appellee.

It is hereby stipulated by and between the parties to the above-entitled action that the foregoing papers are true and correct copies of the pleadings, evidence, exhibits, decisions and proceedings in the record of the Supreme Court of the Philippine Islands in said cause, and constitute all the essential papers necessary to a determi-

CLOSE IN CENTER

nation of the writ of error granted herein to the Supreme Court o the United States.

Dated this 15th day of March, 1907.

HAUSSERMANN, COHN & WILLIAMS,
H. W. VAN DYKE,
Attorneys for Plaintiff and Appellant.
R. D. BLANCHARD,
Ass't Att'y Bureau Justice, Attorney for Defendant and Appellee.

RDB-vb.

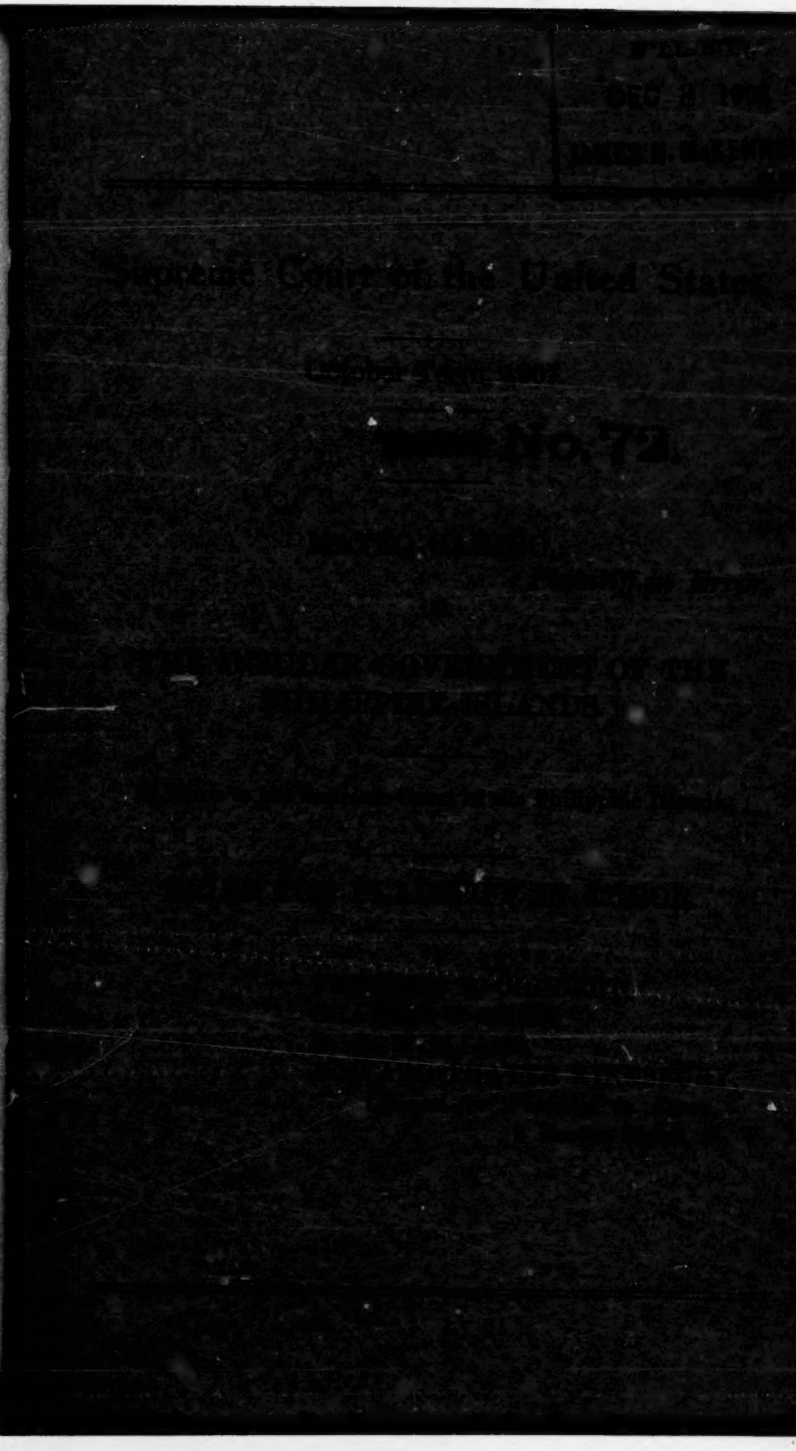
317 UNITED STATES OF AMERICA, *Philippine Islands, ss:*

In obedience to the foregoing writ of error, I hereby transmit t the Supreme Court of the United States a true and complete trans script in English of the record and proceedings in the foregoing en titled cause, this 6th day of March, 1907.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk, Supreme Court, P. I.

Endorsed on cover: File No. 20,690. Philippine Islands suprem court. Term No. 298. Mateo Cariño, plaintiff in error, *vs.* Th Insular Government of the Philippine Islands. Filed May 2d, 190 File No. 20,690.



CLOSE IN CENTER

Supreme Court of the United States,

October Term, 1907.

No. 298.

MATEO CARIÑO, Plaintiff in Error, AGAINST THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS.	Writ of Error to the Supreme Court of the Philippine Islands.

Brief on Behalf of the Plaintiff in Error.

Statement.

This is a Writ of Error to the Supreme Court of the Philippine Islands.

The plaintiff in error began a proceeding in June, 1903, under the Land Registration Act (Act No. 496, U. S. Phil. Comm.) for the registration of a title to some 370 acres of land, situated in the Municipality of Baguio, Province of Benguet. The Court of Land Registration granted the application, and in accordance with the statutory procedure, the Attorney General (both in behalf of the Government of the Philippine Islands, and also in behalf of the United States) appealed to the Court of First Instance in the Mountain Judicial District in and for the Province of Benguet in which the case was tried *de novo;* that Court made full findings of fact, and held that the petitioner was not entitled to registration be-

cause he could show no written grant, thus reversing the decision of the Court of Land Registration (fol. 255).

An appeal having been taken to the Supreme Court of the Philippine Islands, the decision of the Court of First Instance was affirmed and the present Writ of Error was sued out.

The Court of First Instance finds the amount to be in excess of twenty-five thousand dollars, hence the jurisdiction of this Court attaches (fol. 295). Moreover, the plaintiff in error invokes the protection of the Eighth Article of the Treaty of Paris and the Fifth Amendment to the Constitution.

The Facts.

The facts in the case are undisputed.

They are found by the Court of First Instance substantially as stated by the Court of Land Registration and the plaintiff in error has no quarrel with the facts as so found. A number of witnesses were examined, but there was no real contradiction in their testimony and the questions before this Court are purely questions of law.

Mateo Cariño, the plaintiff in error, is an Igorrote and native of the Province of Benguet, P. I., 45 years of age. His father Pablo Cariño was a resident of the same province. His grandfather Bangley also lived upon the land and had occupied it at a period more than fifty years prior to the date of the Treaty of Paris (April 11, 1899) (Rec., fol. 263), and some of the testimony as to the age of the fences would indicate occupation for a period running back at least 100 years (Rec., fol. 170). Upon this land he had made his home and his residence; cultivated thereon camotes (potatoes) and palay (rice) "and occupied a house thereon, and built and caused to be built on and about said lands sundry sod and stone fences which with natural obstructions (and the employment of a herder, not so much to hold the cattle within the pasture as to protect the herds from theft), consti-

tuted an enclosure, wherein he pastured his cattle." (Rec., fols. 259-60.)

While the Court does not find that all the land was enclosed by fences, it finds that there were stone fences, sod fences and barbed wire covering a portion of the land and that such fences were so constructed that natural obstacles were taken advantage of, thus obviating the necessity of enclosing the whole tract with a fence. The land as so fenced made "a fenced pasture enclosure sufficient for the holding and pasturing of his cattle according to the custom of the country." (Rec., fol. 260.)

It appears that these fences were very ancient, as Mr. Haywood, the Civil Engineer, called upon behalf of the Government, who had examined and surveyed this tract of land, testified that some of them, at least, were 100 years old and others at least 40 or 50 years old. In fact there is no evidence to contradict the fair inference that the tenure of the Cariño family went back to remote antiquity, perhaps antedating the arrival of Magellan. (Rec., fols. 170, 177, 179 and 181.)

Pablo Cariño, plaintiff's father, a short time before his death, divided his property among his children by conveyance in accordance with the Igorrote's custom and forms (a kind of a livery of seizin) and the land in question was given to Mateo Cariño. (Rec., fol. 34.)

Mateo Cariño himself never actually lived upon said land, but up to 1903 occupied and used the said lands as pasture lands for his cattle, constructing, in addition to the old fences maintained by his grandfather, other fences of wire. (Rec., fol. 261.)

Precisely how long the Cariño family had occupied this tract of land was not found; but it evidently runs back to a period "when the memory of man runneth not to the contrary," for the Court finds "that as pasture land the time during which the land in question was claimed, occupied and used by Mateo Cariño, Pablo Cariño, his father, and Bangley, his grandfather, exceeds fifty years,

counting back from the time of the American occupation, and the ratification of the Treaty of Paris." (Rec., fol. 261.)

It appears that sometime during the period between 1901 and 1902, the Government of the Philippine Islands laid out and opened a public road through and across the lands in question. Mateo Cariño protested against this invasion of his lands to the Provincial Government of Benguet, the Hon. H. P. Whitmarsh (Rec., fols. 126, 262), and posted notices on such land, which notices were torn down and destroyed. At about the same time an American, named MacDonald, and another named Reavis, severally squatted upon portions of such land, but being informed by Cariño and others of Cariño's undisputed ownership of the land, removed therefrom. (Rec., fol. 262.)

By reason of the action of the Insular Government and the destruction of the fences incident to the making of the road, as well as because of loss of many cattle by reason of the rinderpest, the land could no longer be used by Cariño and he has not since endeavored to pasture cattle thereon; and furthermore, it appears that a military reservation of the United States was established on a part of said land on the 10th of October, 1903, and has been occupied as such ever since. (Rec., fol. 262.)

Not only for more than fifty years prior to the date of the ratification of the Treaty of Paris, but ever since the American occupation, the Cariño family has claimed to be the owner of said land and "their claim of ownership thereto has been generally known and recognized and respected by the Igorrotes of the neighborhood and vicinity." (Rec., fol. 263.) Nor was their title ever questioned by the Spanish authorities.

The Government of the United States, however, and that of the Philippine Islands, never formally recognized the claim of Cariño, but on the contrary have taken possession of his property and used portions for a military sanitarium.

No documentary title appears ever to have been issued by the Spanish Government to Cariño, nor did the Igorrotes ever have or require paper titles, but held land under their own laws and customs, Spanish legislation from the earliest times having recognized and respected the Indian ownership. There is no finding, evidence or suggestion, that the Spanish Government ever claimed the land in question as a part of the public domain, or in any way treated it as such.

It appeared that under the Spanish Régime, both in 1893-4 and again in 1896-7, Cariño made application to the Politico-Military Commandante of Benguet for a documentary title to said lands, but "the Court finds as a fact, that no title was ever issued by the Spanish Government in these Islands based upon or as a result of either or any of these applications for adjustment and composition." (Rec., fol. 266.)

A search of the Spanish archives was made, but no such petition was found and no reference to any such application, save only an abstract from the letter book of the archives which "may or may not refer to the lands in question" and which reads as follows:

> "Official letter from the Commandancia of Benguet remitting petition for the denouncement of lands of the Igorrote Mateo Cariño";

and another extract which has no apparent direct connection with Mateo Cariño's application:

> "that under no consideration can lands in Benguet be conceded until such time as those lands are designated in a definite manner that the Sanitarium and the other dependencias of the same ought to occupy." (Rec., fol. 267.)

Thus the official records contain no competent or material evidence whatever in regard to Cariño's applications. He himself, however, testified that he had made

some applications for a paper title. (Rec., fols. 110-112.) He was asked:

"Q. Do you know why you did not obtain that paper title?

A. Yes.

Q. Why?

A. No; because Governor Martinez, at the same time that we presented the petition to him told us that it was not necessary for us to have any document, *because the land belonged to us, and no one could usurp them or take them from us.*" (Rec., fol. 111.)

William F. Pack, Provincial Governor of Benguet, a witness for the Government and who knew Mateo Cariño and the land in question, testified:

"Mateo is a truthful man."

And again:

"Q. What is the reputation of Mateo Cariño in this vicinity, for integrity and veracity?

A. There is none better in the world. I do not care to convey an imputation against him." (Rec., fol. 77.)

And again:

"During all the time that you have been Governor of this Province is it not a fact that Mateo Cariño was in the exclusive possession of that land in question, except, of course, such possession as the military authorities have and the reservation made by Act 636?

A. He was; there was no one else using that land." (Rec., fol. 79.)

Evidence was adduced to show that Cariño had sold an option on the land to one Clark of Manila, which option had been registered, but this evidence seems to have

been adduced simply for the purpose of influencing the Court to believe the claim to be merely speculative. That it did not have this effect, however, is evident from the statement of the opinion that:

> "The court does not share in the anxiety of the counsel as to the necessity for the protection of the Igorrote Mateo Cariño, from 'speculators' nor does the court see anything fraudulent or inequitable in this contract, nor in the negotiation of the same by Mr. Clarke. It seems to be a speculation on the part of Mr. Clarke in all respects legitimate and honorable. So far as this case is concerned neither the option contract, nor the voluntary conclusions and statements quoted from the Governor Pack letter, as to the motives that actuated Mr. Clarke in negotiating this contract serve to influence this Court in any degree in its opinions and conclusions." (Rec., fol. 273.)

In February, 1901, Cariño instituted a possessory proceeding in the Court of First Instance of La Union and Benguet under Art. 390 *et seq.* of the Mortgage Law. (Translation of the Mortgage Law for Cuba, Porto Rico and the Philippines, 1893, War Dept. 1899, Govt. Ptg. Office.)

This law provides that no document shall be admitted in evidence in the ordinary courts or before the administrative officers of the Government unless it has been first recorded (Art. 389), and continues as follows:

> "Art. 390. To facilitate the compliance of the preceding article to *owners who lack a recorded title of ownership*, no matter at what period the acquisition took place, they shall be permitted to record their interest by previously proving their possession, before the Judge of First Instance of the place where the estates are located, with the consent of the Department of Public Prosecution and citation of the adjacent property owners, should

they desire to record the absolute ownership of some estate, and with the citation of the owner or other participants in the ownership, should they desire to record some property right."

Minute provision is then made for the procedure to be followed; the natural location, boundaries, etc., of the land surveyed must be duly filed and proper witnesses must testify, etc.

In accordance with this law, together with Arts. 436, 438 and 440 of the Regulations for the execution of said Mortgage Law, Mateo Cariño received from the Court of First Instance a decree in his favor in part as follows:

> "Whereas according to the provisions of Articles 390 of the Mortgage Law, the proprietor, who may be lacking a written title of ownership shall be able to record his right, previously proving his possession before the Judge of First Instance of the locality wherein the lands are situate:
>
> Whereas, it has been proved in this proceeding, by the written testimony taken herein by Don Mateo Cariño, *that he possesses, in his own name and by title of inheritance, from time immemorial* the lands hereinbefore described; and that the witnesses who have testified herein are residents and proprietors of the place wherein the estate is located, their qualifications as proprietors being established by means of the certificate presented with and attached to these proceedings and therefore combine the requisites demanded in Article 901 of the aforesaid Mortgage Law." (Fols. 264-5.)

No other proceeding was taken by Mateo Cariño except the proceedings in this case, which began by a petition to the Court of Land Registration to have his lands registered. The opinion of that Court in favor of

Cariño is found upon pp. 6-11 of the Record and contains a clear summary of the facts and of the law applicable to the situation. The decision was appealed from by the Insular Government and the United States (Rec., fol. 18) and was reversed by the Court of First Instance, which decision was affirmed by the Supreme Court of the Philippine Islands.

The Question.

There is but one question in the case. Has Mateo Cariño, the appellant, a legal and valid title to the land in question? If so, the decision of the Supreme Court of the Philippine Islands, confirming that of the Court of First Instance, must be reversed and the decision of the Court of Land Registration affirmed.

The Supreme Court of the Philippine Islands has held in effect that the possession of a definite piece of land under claim of title and in accord with local customary law for no matter how many generations confers no rights which are protected by the Treaty of Paris unless the possessor, whether aboriginal or Spaniard, had obtained, during the Spanish Régime, some paper title. If this decision be affirmed the whole Igorrote nation may be driven as "lawless squatters" from land which their fathers held before ever Spanish explorers set out in quest of the Indies. So unjust and startling a result cannot be reached without a revision to legal notions of property and social order incompatible with any stage of civilization above barbarism.

Assignment of Errors.

I.—The Court erred in holding that prescription did not run against public agricultural lands of the Kingdom of Spain in the Philippine Islands during Spanish sovereignty.

II.—The Court erred in holding that a grant of title

of public agricultural lands in the Philippine Islands could not be presumed from immemorial use and occupation.

III.—The Court erred in holding as a conclusion of law from the facts of record that title to the land involved in this proceeding had not vested in the plaintiff.

IV.—The Court erred in holding that Mateo Cariño, plaintiff herein, was not the owner in fee simple of the land involved in this proceeding, and was not entitled to its registration under the provisions of the Land Registration Act of the Philippine Islands.

V.—The Court erred in affirming the decision of the Trial Court ordering the dismissal of plaintiff's application. (Rec., fol. 308.)

SYNOPSIS OF PLAINTIFF IN ERROR'S CONTENTIONS.

1. The land belonged to Cariño under the Igorrote law. He had inherited it from his ancestors in accordance with the native customs and his title had never been questioned. The Spanish law explicitly recognized and scrupulously protected the Indian titles. Possession of land under such circumstances confers a property right *jure gentium* independently of any rule of prescription.

2. Claimant having actually possessed the land in question for more than thirty years had acquired, under the Spanish Civil Code, good prescriptive title. The provisions of this Code as to prescription apply to all lands in the Philippine Islands regardless of whether owned by the Government or not, just as they admittedly do in the Spanish Peninsula itself.

3. The provisions of the Civil Code applied to public agricultural lands as well as to other lands, and a detailed examination of the provisions relating to public

lands shows no intention on the part of the Government to except them from the purview of the Code enactments as to prescription, but on the contrary recognize the applicability of the common or general law.

4. The case of Valenton *v.* Murciano, 3 Phil. Rep., 537, to the effect that public agricultural lands were not within the purview of the Code provisions, is unsound and the doctrine should not be affirmed in this Court. Moreover, it is inconsistent with other decisions of that Court, and is distinguishable from the case at bar.

5. Cariño had a legal title under the Civil Code. Registration was a mere procedural formality and did not create property. In any event, he had a right of property under Spanish law which was protected by the Treaty of Paris. (Alfonso Buenaventura *v.* Commanding General, 6 Phil. Rep., 601.)

6. The Land Registration Court had jurisdiction of the subject matter and its decision was legal, just and in conformity with the provision in the Treaty of Paris providing for the protection of private property.

POINTS.

I.

The Court of Land Registration had jurisdiction in the premises.

The Court of First Instance held (Rec., fols. 293, 294) that the Land Court had no jurisdiction to entertain Cariño's petition for registration because Act No. 926 (The Public Land Act) had not been extended to Benguet. This ruling misconceives the whole proceeding. Cariño's application was not under Act No. 926 to perfect an incomplete title, and in effect obtain a government grant, or government confirmation of an imperfect

Spanish grant, or to exercise a surviving right of preemption based on Spanish law. The application was made under Act No. 496 (the Land Registration Act, by which the Land Court was created), and its object was not to perfect an inchoate title, but to record or register a title which was perfect and complete in itself, and in reference to which it was a convenience to have written evidence, which the Act was intended to render procurable.

The jurisdiction of the Land Court is thus defined by Act 496:

> Sec. 2. "A court is hereby established to be called "the 'Court of Land Registration,' which shall have "exclusive jurisdiction of all applications for the "registration under this Act of title to land or build- "ings or an interest therein within the Philippine "Islands, with power to hear and determine all ques- "tions arising upon such applications, and also have "jurisdiction over such other questions as may come "before it under this Act, subject to the rights of "appeal, as hereinafter provided."

Sec. 19 further provides:

> "Application for registration of title may be made by the following persons, namely:
>
> First. The person or persons claiming, singly or collectively, to own the legal estate in fee simple."

Now Cariño certainly claimed to own the "legal estate in fee simple"—the "*dominio*"—of the land in question; he made his application; he proved the facts on which his ownership was based; and under Sec. 2, *supra*, the Land Court had complete jurisdiction "to hear and determine all questions arising upon such application." It heard them, it determined them in the applicant's favor, and its jurisdiction to do so is beyond question, as well as the soundness and justice of its decision.

Act 926 shows the settled policy of the United States to recognize and protect all property rights in land, complete or inchoate, which existed at the time of the Treaty, but it is unnecessary for plaintiff to claim under it, and its extension or non-extension to Benguel is not a material factor in this case.

POINT II.

Cariño was the absolute owner of the land *jure gentium*. The land in question never formed part of the public domain.

In the Court below the question discussed was whether Cariño could have acquired title by prescription (unconfirmed by written grant) of land which belonged to the public domain.

This view seems to us to misconceive the real situation. It is erroneous in two basic assumptions, (1) that the land was public domain, (2) that the claimant or his predecessors were originally "squatters."

The real situation is essentially different. The land never at any time belonged to the Crown, but had since, and of necessity before, the Spanish conquest been in the possession of natives who had settled customs and laws of their own, not the least of which was the ownership of lands in severalty. Cariño and his predecessors held the land not as "squatters" on Crown lands but according to the laws and customs of their people (fols. 260-1).

If this be true historically, and there is, we believe, no ground for dispute on the point, there can be no reason for considering the questions of prescription and lost grant discussed so fully below.

Character and Customs of Igorrote Indians.

The Igorrote Indians constitute the majority of the

population of the Province of Benguet, being some 47,000 persons. The Philippine Commission, in its Report for 1902, Part I, p. 183) said of them:

> "The Igorrotes, clear-eyed, muscular and deep chested, honest and heathen, timid in manner but courageous in fact, herders and hunters, thinly populate Benguet, Lepanto, Bontoc and the mountains of the Ilocano and Cagayan countries. Except for their head-hunting forays, which persuasion could stop, they give no trouble. Physically they form the best military material in Luzon. The Bontoc constabulary is composed entirely of Igorrotes, and the attempt to give them the training and discipline necessary to soldiers is an interesting experiment."
>
> Phil. Com. Rep. 1902, Part I, p. 183.
> See also Census of Philippine Islands 1903, Vol. I, pp. 533 *et seq.*

The Commission in 1904 speaks of "the Igorrote soldiers as among the best and most reliable in the Corps" (constabulary). (Phil. Com. Rep. 1904, Part I, p. 574.) They are industrious and honest and construct wonderful irrigation and agricultural works. They are on the best of terms with the Americans and build and maintain the barracks for the constabulary forces and the necessary trails and roads. Their only "failing" in the language of the Commission seems to be "a fondness for the heads of strange tribes." This unfortunate peculiarity seems to have about vanished in these latter years.

The record here discloses that these people have made great progress in the arts of civilization and that the claimant here is himself a man of more than ordinary intelligence and thrift (Rec. fol. 270). Counsel for the Insular Government put forth a somewhat fanciful theory that the land here claimed was held by Cariño not as an individual but as a "bucknon" or chief who held land in a quasi feudal or seigniorial capacity. This suggestion

was based upon a letter from Governor Pack (of Benguet), who says that "Igorrote chieftains like Mateo simply by force of character maintained their dominant sway over large tracts of land" (fol. 222). This view is evidently not founded upon fact, at least as far as Cariño is concerned; whether it expresses some historic truth as to the origin of Igorrote property does not appear.

The learned Governor himself evidently changed his views, for we find him in a recent report expressly defining the word "bucknon" as "wealthy,—well to do." (Phil. Com. Rep. 1905, Part I, p. 176.)

The Trial Court disposes of the matter by acquiescing in the definition of "bucknon" given by Cariño himself as "A man that lives comfortably." It continues:

> "This title 'bucknon' is in no sense the holding of an office of chieftainship, save only as the man whose industry, thrift and superior intelligence, accompanied by honesty and integrity and resulting in the accumulation of wealth, the improvement of manners and customs of living, is invariably looked up to among all people, whether Christian or non-Christian, and in every grade of civilization above pure barbarism, as a leader among his fellows and an example among his fellows" (fol. 270).

That the Igorrotes are rapidly improving their lands, and manifesting a desire to educate their children is stated by the Court in eulogistic terms. Surely no grounds can be adduced for expropriating the claimant because he is a savage.

The Igorrote laws and customs regarding property rights are set forth in some detail in a Government publication, "The Bontoc Igorot," by Albert Ernest Jenks (Vol. I, Ethnological Survey Publication, Dept. of the Interior, Manila, P. I., 1905), from which we quote as follows:

"PROPERTY RIGHT.

The idea of property right among the Igorot is clear. The recognition of property right is universal, and is seldom disputed, notwithstanding the fact that the right of ownership rests simply in the memory of the people—the only property mark being the ear slit of the half-wild carabao. * * *

REAL PROPERTY OF INDIVIDUAL.

The individual owns dwelling houses, granaries, camote lands about the dwellings and in the mountains, millet and maize lands in the mountains, irrigated rice lands, and mountain lands with forests. In fact, the individual may own all forms of real property known to the people.

It is largely by the possession or non-possession of real property that a man is considered rich or poor. This fact is due to the more apparent and tangible form of real than personal property. The ten richest people in Bontoc, nine men and a woman, own, it is said, in round numbers, one hundred sementeras each. The average value of a sementera is 10 pesos for every cargo of palay it produces annually. A sementera producing 10 cargoes is rated a very good one, and yet there are those yielding 20, 25, 30, and even 40 cargoes. * * *

It is claimed that each household owns its dwelling and at least two sementeras and one granary, though a man with no more property than this is a poor man, and some one in his family must work much of the time for wages, because two average sementeras will not furnish all the rice needed by a family for food. * * *

Title to all buildings, building lands in the pueblo, and irrigated rice lands is recognized for at least two generations, though unoccupied during that time. They say the right to such unoccupied property would be recognized perpetually if there were heirs. At least it is true that there are now acres of unused lands, once palay sementeras, which have not been cultivated for two gen-

erations because water cannot be run to them, and the property right of the grandsons of the men who last cultivated them is recognized. * * *

Sale of Property.

Personal property commonly passes by transfer for value received from one party to another. Such a thing as transfer of real property from one Igorot to another for legal currency is unknown; the transfer is by barter. The transfer of personal property was considered in the preceding section on commerce.

Real property is seldom transferred for value received except at the death of the owner or a member of the family; at such times it is common, and occurs from the necessity of quantities of food for the burial feasts and the urgent need of blankets and other clothing for the interment.

Again, camote lands about the dwellings are disposed of to those who may want to build a dwelling. Dwellings are also disposed of if the original occupant is to vacate and some other person desires to possess the buildings.

Death may destroy one's personal property, such as hogs and carabaos, but almost never does an Igorot 'lose his property,' if it is real. Only a protracted family sickness or a series of deaths requiring the killing of great numbers of chickens, hogs, and carabaos, and the purchase of many things necessary for interment can lose to a person real property of any considerable value.

There is no formality to a 'sale' of property, nor are witnesses employed. It is common knowledge within the ato when a sale is on, and the old men shortly know of and talk about the transaction—thenceforth it is on record and will stand.

Inheritance and Bequests.

* * * * * * *

Since all the property of a husband and wife is individual, except that accumulated by the joint efforts of the two during union, the property of each is divided on

death. The survivor of a matrimonial union receives no share of the individual property of the deceased if there are kin. It goes first to the children or grandchildren. If there are none and a parent survives, it goes to the parent. If there are neither children, grandchildren nor parents it goes to brothers and sisters or their children. If there are none of these relatives the property goes to the uncles and aunts or cousins. This seems to be the extent of the kinship recognized by the Igorot. If there is no survivor the property passes to that friend who takes up the responsibilities of the funeral and accompanying ceremonies. The law of inheritance, then, is as follows: First, lineal descendants; second, ascendants; third, lateral descendants; fourth, surviving spouse; fifth, self-appointed executor who was a personal friend of the deceased.

Primogeniture is recognized, and the oldest living child, whether male or female, inherits slightly more than any of the others. For instance, if there were three or four or five sementeras per child, the eldest would receive one more than the others.

This law of primogeniture holds at all times, but if there are three boys and one girl the girl is given about the same advantage over the others, it is said, as though she were the eldest. If there are three girls and only one boy, no consideration is taken of sex. When there are only two children the eldest receives the largest or best sementera, but he must also take the smallest or poorest one.

It is said that division of the property of the deceased occurs during the days of the funeral ceremonies. This was done on the third day of the ceremonies at the funeral of old Som-kad, mentioned in the section on 'Death and Burial.' The laws are rigid, and all that is necessary to be done is for the lawful inheritors to decide which particular property becomes the possession of each. This is neither so difficult nor so conducive of friction as might seem, since the property is very undiversified."

Recognition of Aboriginal Property Rights by American Law.

One cannot refrain from surprise at the position of the Insular Government that Cariño had no property rights but was a mere "squatter." Not only did Spain never take such a view, but the American Courts have uniformly held the individual possession of the American Indian to his land as sacred. While the United States Government has claimed a general right of paramount control over the Indian tribes as such, the doctrine that the right of the individual to the land which was his by tribal law could be taken away at will and that he was a mere lawless "squatter" has never been an official American doctrine. Nor has it been sanctioned, by practice at least, in our day. Save in this and perhaps a few other isolated cases there is no evidence that the Philippine authorities desire to revert to the moral standards of Cortez and Pizarro in dealing with the aborigines in the new possessions. A wholly different view of Indian titles finds expression in the most recent utterances of this Court. Speaking of Indian title Mr. Justice McKenna writing for the Court, says:

> "It is certainly more than a mere right of occupation. * * . The title is held by the United States, it is true, but it is held in trust for individuals and their heirs to whom the same were allotted."
>
> United States *v.* Paine Lumber Co., 206 U. S., 467.

And again Mr. Justice White in reviewing the cases involving the relations of the Indians to Government, says:

> "The Indian right of occupancy of tribal lands, whether declared in a treaty or otherwise created has been stated to be sacred, or as sometimes expressed as sacred as the fee of the same lands in the United States.'
>
> Lone Wolf *v.* Hitchcock, 187 U. S., 564.

"The Indian title is property, and alienable, unless the treaty has prohibited its sale."

Doe [redacted] *v.* Wilson, 23 How., 463.

Recognition and Protection of Aboriginal Titles by Spanish Law.

The law of Spain recognized and protected the rights of the native occupants of its Indian possessions even more fully and scrupulously than our own Government has done in the case of its Indian wards. Whatever may have been the brutality of the fierce "Conquistadores," and the abuses of some of their successors, the Home Government, at least, promulgated a Code for the treatment of the Indians far surpassing in broad humanity any legislation of that age. This was doubtless due in large measure to the splendid efforts of that good and great man, Las Casas, the most devoted friend the Indian has known. (See Arthur Helps, "Spanish Conquest in America.")

The "Laws of the Indies," that famous compilation of Spanish legislation for the government and administration of its provinces beyond seas, show a continuous, consistent and conscientious purpose to protect the native inhabitants in their persons, liberties and possessions, to secure their property rights against Spanish greed and native improvidence, and in general to put them in the position not of conquered subjects, but of favored wards. We shall quote from these laws at some length, even at the risk of appearing to expand this brief somewhat unduly, because they establish so conclusively, both by their general tenor and by their specific provisions, that Spain never in any way claimed the lands of the Indians as a part of the public domain, but recognized and confirmed all property rights in lands resting upon Indian customs and Indian possession, and protected them against private lawlessness, official misconduct, and even clerical acquisitiveness.

Book Sixth of this compilation is devoted entirely to

the subject of the native inhabitants, and the first law of its first title will illustrate the general spirit of the legislation. It is as follows:

Book 6, Title 1, Law 1.

Philip II, at Madrid, December 24, 1580. Charles II and the Queen Regent.

THAT THE INDIANS BE FAVORED AND PROTECTED BY THE ECCLESIASTICAL AND SECULAR AUTHORITIES.

"Having to treat in this book the subject of the Indians, their liberty, growth and protection, as is set forth in the titles of which it is composed; it is our will to charge upon the viceroys, Presidents and Audiencias, the duty of looking after them and giving the proper commands, in order that they may be protected, favored and relieved, because we desire that the injuries which they suffer be remedied, and that they may live without molestation or annoyance; taking this charge as established once for all, and having always before them the laws of this compilation which favor and protect them, and defend them from all injury whatsoever, that they observe them and cause them to be observed with great care, punishing those who violate them with special and rigorous severity; and we ask and charge upon the ecclesiastical authorities that for their part, they act as true spiritual fathers of this new Christendom, and preserve them all in their privileges and prerogatives, and keep them in their protection."

(For Spanish text see Appendix, p. 81.)

That these laws applied specifically to the Philippine Islands is manifest from the following:

Book 6, Title 1, Law 15.

Philip II, at Madrid, November 7, 1574.

THAT THE INDIANS IN THE PHILIPPINE ISLANDS BE NOT FORCIBLY REMOVED FROM ONE ISLAND TO ANOTHER.

"We command that in the Philippine Islands the Indians be not removed from one to another for settlement by force and against their will, except in some very necessary case, and that they be paid for their work and services, and be well treated and receive no injury."

(See Appendix, p. 81.)

This recognized the well known attachment of the Philippine Indians to the soil on which they were born and bred.

Their ownership of lands, both severally and by communities, is expressly recognized in the following:

Book 6, Title 1, Law 23.

Philip III, Ordinance 10 of 1609, concerning personal services.

THAT A TIME BE APPOINTED TO THE INDIANS FOR THEIR OWN LANDS AND GRANARIES, AND THAT IT BE MADE SURE THAT THEY HAVE THEM.

"It is right that time should be allowed to the Indians to work their own individual lands, and those of the community, and that the viceroys and governors should appoint such time as is necessary, so that they may resort to their granaries; and see to it that they have them, so that they may be the better relieved, and the land better cultivated. We so command."

(See Appendix, p. 82.)

This also shows that the Spanish Government realized that some Indians, both individually and in communities, were not adequately provided with lands of their own, and that this lack should be supplied by the proper officials.

Due precaution was also taken that the Indians should not suffer from their own improvidence, or be imposed upon by the unscrupulous:

Book 6, Title 1, Law 27.

Philip II, at Aranjuez, May 24 and July 23, 1571. At San Lorenzo May 6, and at Madrid May 18, 1572.

THAT THE INDIANS MAY SELL THEIR PROPERTIES WITH JUDICIAL PERMISSION.

"When the Indians sell their property, real and personal, according to what is permitted to them, it shall be proclaimed by public outcry and sold at public auction, in the presence of a judicial officer—the real estate for a period of thirty days, and personal property for nine days; and whatever shall be sold in any other way shall be of no value or effect; and if it shall seem proper to the judge for sufficient reason to shorten the time, he can do so in regard to personal property. And since the property which the Indians sell is ordinarily of small value, and if in all of such sales it was necessary to follow these formalities, it would involve as much expense as the principal amounts to, we order that this law be observed and enforced, in regard to whatever exceeds thirty pesos of usual gold, and not in smaller amounts; for in this case it will be sufficient for the Indian vendor to appear before any ordinary judge, and ask leave to make the sale; and such judge, ascertaining by some investigation that what he wishes to sell is his own, and that its alienation is not injurious to him, shall give him permission, placing his authorization upon the writing which the purchaser shall execute, being of full age and having capacity to that end."

(See Appendix, p. 82.)

This shows that not merely was Indian ownership of real and personal property expressly recognized, but specially protected by requirements similar to those applicable to minors and other persons under disability. They had a right to sell their properties, but care was taken that they should not do themselves injury by the exercise of such right.

Their right of testamentary disposition was also recognized and safeguarded:

Book 6, Title 1, Law 32.

Philip II, at El Pardo, April 16, 1580.

THAT THE INDIANS HAVE FREEDOM IN THEIR DISPOSITIONS.

"If any Indians who are rich or have property in any form are ill, and attempt to execute their wills, it happens that the priests and teachers, clerics and religious, induce and command them to leave the whole or the greater part of their properties, either to them or the church, even although they may have forced heirs—an abuse which is very prejudicial and unlawful. We command the Viceroys, Presidents, and Audiencias that they see to it and give the proper orders to the end that the Indians receive no injury, and have complete liberty in their dispositions, and permit no violence against them; and we command the ecclesiastical prelates not to suffer it, but to observe Law 9, Title 13, Book 1."

(See Appendix, p. 83.)

It was evidently desired that the Indians should be brought into regular settlements, in order, doubtless, the better to control them; but even when this was done, their property rights in the lands from which they moved were to be scrupulously respected:

Book 6, Title 3, Law 9.

Philip II, at Toledo, February 19, 1580.

THAT THE INDIANS BROUGHT INTO SETTLEMENTS BE NOT DEPRIVED OF THE LANDS WHICH THEY HELD PREVIOUSLY.

"The Indians will be brought into settlements with greater willingness and alacrity, if they are not deprived of the lands and granaries which they had in the localities which they may leave. We order that

in this no change be made, and that they keep them, in the same manner that they held them before, in order that they may cultivate them and endeavor to improve them."

(See Appendix, p. 83.)

Even in the case of the death of Indian land-owners without any known heirs or successors, the government exercised only a limited right of escheat, and the greater part of such vacant inheritances devolved upon the Indian communities. The officers especially charged with the care and supervision of the Indians ("Encomenderos") were expressly barred from succeeding to such lands, thus removing an obvious source of temptation:

Book 6, Title 1, Law 30.

The Emperor Charles and the Prince Regent at Madrid, May 14, 1546.

THAT THE COMMANDANTS ("ENCOMENDEROS") SHALL NOT SUCCEED TO LANDS LEFT VACANT BY THE DEATH OF INDIANS.

"The commandants cannot succeed to the lands and inheritances which have been left vacant on account of the death of Indians within their commanderies ('encomiendas') without heirs or successors, and there shall succeed to them the villages of which they were inhabitants, up to the amount that may be fairly necessary for the payment and satisfaction of the tribute which may be imposed upon them, and something more; and the rest that is over shall be applied to our royal patrimony."

(See Appendix, p. 83.)

Special provision was also made against abuses by private travelers among the Indians:

Book 6, Title 3, Law 26.

The Emperor Charles at Toledo, December 4, 1528.

THAT TRAVELERS TAKE NOTHING FROM THE INDIANS BY FORCE.

"We order that in Indian villages, settlements and farms, the travelers shall not take from the Indians against their will provisions or other things, and if anyone sells them, that the reasonable value be paid, and if anyone shall take anything in any other way, the judges shall compel him to make satisfaction to the Indians and pay a penalty of twice or four times the amount, one-half to the public treasury, and the balance to be divided between the judge and the informer."

(See Appendix, p. 84.)

In the Second Book of the Compilation, which deals with the legal and judicial system of the colonies, are also found special provisions for the protection of the Indians. A particularly important one is as follows:

Book 2, Title 1, Law 4.

The Emperor Charles and the Princess Regent Joanna, at Valladolid, August 6, 1555.

THAT THERE BE OBSERVED THE LAWS WHICH THE INDIANS ANCIENTLY HAD FOR THEIR GOVERNMENT AND THOSE WHICH HAVE BEEN NEWLY MADE.

"We order and command that the laws and good customs which the Indians anciently had for their good government and order, and their usages and customs which they have observed and kept since they became Christians, and which are not incompatible with our holy religion, or with the laws of this book, as well as those which they have recently made and declared, be kept and executed, and, it being necessary, by these presents we approve and confirm them, together with what we are able to add thereto that is useful to us and appears to us accordant with the service of God our Lord, and our own, and the preservation and Christian government of the natives of these provinces, without prejudice to what has already been done, and their good and just customs and their own statutes."

(See Appendix, p. 74.)

This is an express adoption of the Indian laws and customs for the ownership and transmission of their own property; in other words, where actual peaceable continued possession of land constituted ownership, as it evidently always has, and still does, among the Igorrote Indians, such ownership was recognized by the Spanish government.

It was also provided that the protection, intended to be afforded to the Indians by the laws on their behalf, should not be rendered futile by dilatory legal proceedings:

Book 2, Title 1, Law 5.

The Emperor Charles at Toledo, December 4, 1528, Chapter 15, and August 24, 1529.

THAT THE LAWS IN FAVOR OF THE INDIANS BE ENFORCED, NOTWITHSTANDING APPEAL.

"Desiring the preservation and growth of our Indies, and the conversion of the natives to our Holy Catholic faith, and to secure their good treatment, we have directed that there be collected in this compilation everything that has been ordered and decreed in favor of the Indians and that there be added that which has seemed necessary and proper. And since our will is, that this, and particularly the laws which have been made in favor of the Indians, be inviolably observed, we command the Viceroys, Audiencias, Governors and other judges and tribunals, that they observe and obey them, and cause them to be observed, obeyed and enforced in all respects and in every particular, notwithstanding appeal or petition, under the penalties contained in them, and further in our discretion, and on pain of forfeiture of all property to our treasury and exchequer, and suspension from office."

(See Appendix, p. 75.)

Book Fourth of the Compilation treats of discoveries, colonization and land law generally. A most significant provision therein is the following:

Book 4, Title 1, Law 6.

Ordinance 29, concerning colonies. Philip IV at Madrid, June 11, 1621, Charles II and the Queen Regent.

THAT IN THE PATENTS THE WORD CONQUEST BE AVOIDED, AND THOSE OF PACIFICATION AND COLONIZATION USED.

"For suitable causes and considerations, it is proper that in all the patents which are made out for new discoveries, the word 'conquest' be avoided, and in its place the words 'pacification' and 'colonization' used. Since, desiring to act with all peace and charity, it is our will, that this word, by being interpreted contrary to our intention, should not give opportunity or excuse to the patentee to do violence or injury to the Indians."

(See Appendix, p. 75.)

This is an express disclaimer of any "title by conquest" to the new Spanish possessions, for the very purpose of protecting the Indians against oppression and spoliation under color of such claim. In other words, the Spaniards regarded themselves not as conquerors, but as settlers or pioneers, not ousting the aboriginal inhabitants, but taking their place among them in the amply sufficient vacant territory. As will be seen by other provisions, this distinction between Spanish Crown lands, which the government could distribute to the Spaniards, and original Indian lands, which the government never claimed nor attempted to distribute, runs through the whole legislation on the subject.

The explorers were expressly forbidden to take part in any Indian factional disputes, so as to enrich themselves by "fishing in troubled waters," or to take any property from the Indians, except by fair exchange or free gift:

Book 4, Title 1, Law 10.

Philip II, Ordinance 20, concerning colonies.

THAT THE DISCOVERERS SHOULD NOT INVOLVE THEMSELVES IN WARS OR FACTIONS AMONG THE INDIANS, OR DO THEM ANY DAMAGE, OR TAKE ANYTHING FROM THEM.

"The discoverers by land or sea shall not involve themselves in any war between certain Indians and others, nor foment nor assist in any controversies, for any cause or reason whatsoever; they shall do them no harm nor injury, nor take their property, except by way of barter, or gifts made of their own free will."

(See Appendix, p. 76.)

Another and broader provision to the same effect is a very Magna Charta of Indian rights, and compares favorably with that famous bulwark of private security, or with our own constitutional provisions based thereon:

Book 4, Title 1, Law 8.

The Emperor Charles, Ordinance 8th, of 1523.

THAT IT IS NOT PERMITTED TO MAKE WAR ON THE INDIANS, OR DO THEM HARM OR INJURY, OR TAKE ANYTHING FROM THEM WITHOUT PAYMENT.

"We order and command the Governors, chiefs and new discoverers, not to suffer or permit anyone to make war against the Indians, except in the cases mentioned in the Title concerning war, or to do them any other wrong or injury whatever, or to take from them anything of their property, fortune, cattle or crops, without payment in advance, and full satisfaction given, provided that purchases and exchanges shall be of their own free will and accord, and that punishment be inflicted upon those who maltreat or injure them, in order that they may easily come to a knowledge of our Holy Catholic Faith."

(See Appendix, p. 76.)

This is superior even to our own "due process of law" requirements, in that payment for property taken must be made *in advance.*

The provisions regulating the allotment and preemption of lands all show the same solicitude for Indian rights.

In any allotments made, the Indian lands are to be undisturbed:

Book 4, Title 12, Law 5.

The Emperor Charles at Barcelona, April 4, 1532. Philip II, Ordinance of councils, 1563, and Ordinance 58, at Toledo, May 25, 1596.

THAT ALLOTMENTS OF LANDS BE MADE AFTER CONSULTATION WITH COUNCILS, AND THAT THE COUNCILLORS BE PREFERRED.

"When there is occasion to allot lands, waters, springs and pastures among those who colonize them, the Viceroys and Governors who hold our license, shall make the allotment after consultation with the councils of cities and villages, taking care that the councillors be preferred, unless they have already received equivalent lands and holdings; and there shall be left to the Indians their lands, inheritances and pastures, so that they shall not lack what is necessary, and shall have all possible ease and comfort, for the support of their families."

(See Appendix, p. 77.)

Book 4, Title 12, Law 7.

Philip II, at El Pardo, April 6, 1588.

THAT LANDS BE ALLOTTED WITHOUT FAVOR TO INDIVIDUALS OR INJURY TO THE INDIANS.

"We order that allotments of lands, both in new colonies and in places and limits already colonized, be made with all fairness, without partiality, favor to individuals, or injury to the Indians."

Where lands actually belonging to the Indians had been wrongfully granted, they were to be restored:

Book 4, Title 12, Law 9.

The same at Madrid, June 1, 1594.

THAT LANDS BE NOT GRANTED TO THE INJURY OF THE INDIANS, AND THAT THOSE ALREADY GRANTED BE RETURNED TO THEIR OWNERS.

"We order that grants of farms and lands to Spaniards be without injury to the Indians, and that those which have been granted to their loss and injury, be returned to the lawful owners."

(See Appendix, p. 77.)

The general land law, which was referred to by the Court in the Valenton case, is explicitly clear in its recognition of Indian rights. It is as follows:

Book 4, Title 12, Law 14.

Philip II, November 20, 1578. .March, 8, 1589, and at El Pardo November 1, 1591.

THAT THE POSSESSORS OF LANDS, FARMS, PLANTATIONS AND MANORS WITH LAWFUL TITLES, BE MAINTAINED IN SUCH POSSESSION, AND THAT ALL OTHERS BE RESTORED TO THE KING.

"Whereas we have wholly succeeded to the lordship of the Indies; and the farms, messuages, and lands which have not been granted by their Majesties the Kings our predecessors, or by us, or in our name, belong to our patrimony and royal crown; and it is meet that all the land which is possessed without just and true titles be restored to us, in manner and form as it belongs to us; we order that, reserving in the first place whatever may appear necessary to us, or to the Viceroys, Audiencias and Governors for public squares, ways, commons, pastures and farms, in the places and villages which have been

colonized, as well for what is suitable for their present state, as for the future, and the growth which they may make, and allotting to the Indians what they fairly need to cultivate and make their plantations and gardens, *confirming them in what they have now,* and giving them further what is necessary, all the rest of the land may be and remain free and unencumbered to grant freely and dispose of at our will and of our own bounty. Therefore, we order and command the Viceroys and Presidents of pretorian Courts, that when it seems proper to them, they appoint a suitable term within which the possessors shall exhibit to them and the officers of their Councils whom they may appoint, their grants of lands, farms, plantations and manors, and confirming those who hold with good grants and assurances or by *just prescription,* that the rest be returned and restored to us to dispose of at our will."

(See Appendix, p. 78.)

Since this law expressly confirms the Indians in their then present possessions, and recognizes ownership based on "just prescription," equally with that based on royal grant, there cannot be read into it any intention to force the Indians to register their lands under pain of forfeiture. The Indians held under their own laws and customs, and obviously could not have any grants or *"titulos"* to exhibit to the royal commissioners, and this requirement therefore could not possibly apply to them. Doubtless, they might, if they wished, put upon record evidence of their immemorial possession, and thus obtain a further assurance of their ownership, but the law did not expressly require this, and it is evident from the record of this very case that such a course was not followed in practice, for the Spanish Governor Martinez told the present claimant "that it was not necessary for us to have any document, because the lands belonged to us, and no one could usurp them or take them from us." (Record, Folio 111.)

That the very formalities attendant upon government grants were intended principally for the protection of the Indians, appears from the following:

Book 4, Title 12, Law 16.

The Emperor Charles, and the Empress Regent at Ocaña, February 27, 1531. Philip III at El Pardo, December 14, 1615, and at Madrid, June 17, 1617.

THAT LANDS BE GRANTED AND SOLD PURSUANT TO THE PROVISIONS OF THIS LAW, AND THE PARTIES IN INTEREST OBTAIN CONFIRMATION.

"To avoid the inconvenience and damage which follow from granting or selling manors, farm holdings and other areas of land, to the Spaniards, to the damage of the Indians, based upon tainted proceedings of witnesses: We order and command, that when lands are granted or sold, it shall be done upon notice to the Fiscals of our royal Audiencias of the district, who shall be under an obligation to investigate and examine with all diligence the character and testimony of the witnesses: And the Presidents and Audiencias, if they shall so determine, shall grant or sell them upon consultation with the Land Office, where it must be determined if they belong to us, proclaiming them by public outcry, and selling them at public auction, as in the case of our other property, and always looking to the g[illegible] of the Indians; and in case they are to be granted or sold by the viceroys, it is our will that none of the said officials shall intervene; and the grant which shall be given to the parties in interest is to obtain our confirmation within the ordinary period, which is observed in the grants of commanderies of Indians."

Not merely were Indian lands not subject to royal grant, but lands which had been wrongfully acquired by individual Spaniards from Indians were not subject to preemption, and a duty was imposed upon the public

officers to institute the necessary proceedings to procure their restoration to their lawful owners:

Book 4, Title 12, Law 17.

Philip IV at Saragossa, June 30, 1646.

THAT NO ONE BE ADMITTED TO PREEMPTION OF LANDS WHICH HAD BELONGED TO THE INDIANS, OR BEEN HELD WITH FAULTY TITLE, AND THAT THE FISCALS AND PROTECTORS MAINTAIN THE PROPER PROCEEDING.

"The more to favor and protect the Indians, and that they may receive no injury, we command that no preemption be made of lands which the Spaniards had acquired from Indians contrary to our royal decrees and ordinances, or which they possess with faulty title; because as to these, it is our will that the Fiscal-Protectors, or those of the Audiencias, if there are no Fiscal-Protectors, shall take the necessary proceeding, and maintain the right which belongs to them by such decrees and ordinances, to demand the annulment of such contracts. And we charge the Viceroys, Presidents and Audiencias to give them every assistance for their full compliance herewith."

(See Appendix, p. 79.)

Not only was original Indian ownership respected, but Indian communities were allowed to acquire additional lands by preemption, and were given preference therein:

Book 4, Title 12, Law 19.

The same at the same place, June 30, 1646.

THAT NO ONE BE ADMITTED TO PREEMPTION WHO HAS NOT POSSESSED THE LANDS FOR TEN YEARS, AND THAT THE INDIANS BE PREFERRED.

"No one shall be admitted to preemption of lands, who has not possessed them for ten years, even if he claims that he is in actual possession thereof, since

this pretext alone is not sufficient, and the communities of Indians shall be admitted to preemption in preference to other private individuals, giving them every advantage."

(See Appendix, p. 80.)

Individual and community ownership were both expressly recognized and protected, and all lands, which the Indians had improved or cultivated in any way, were carefully reserved to them:

Book 4, Title 12, Law 18.

The same at Madrid, March 16, 1642, Saragossa, June 30, 1646.

THAT THEIR LANDS BE LEFT TO THE INDIANS.

"We order that the sale, benefit and preemption of lands be made with such care that there be amply left to the Indians those which belonged to them, whether individually, or in communities, and that the waters and springs, and the lands in which they have made works for irrigation, or any other improvement, and those which they have cultivated by their personal industry, be reserved in the first place, and that they cannot in any case sell or alienate them; and the judges who shall be sent shall specify the Indians who shall be found upon the lands, and the lands which shall be left to each one of the elders, chiefs, headmen, caciques, governors, absentees and communities."

(See Appendix, p. 80.)

The effect of all this legislation is briefly this: Spain never claimed title to the original Indian holdings in her colonial possessions, by virtue of conquest or otherwise. She recognized ownership based upon native laws and customs. She protected this ownership by the most stringent regulations. She may have allowed native titles to be registered, but she did not require it, and wherever the laws made a distinction between Indian and

Spanish owners, such distinction was in favor of the Indians, and for their greater protection.

In the case at bar, it is evident that Cariño and his predecessors owned the land in suit by Indian law and custom; that such ownership was recognized and protected by Spain, and at the time of the Cession constituted property in the fullest and most sacred sense; this property right was protected both by general international law, and by the Treaty of Paris, which expressly guaranteed all rights attaching, not merely to recorded grants and titles, but to "the peaceful possession of property of all kinds."

POINT III.

Prescription ran against the State under Spanish law. Assuming merely *arguendo* that the land occupied by Carino was public land, even so, he had acquired a title thereto.

The Civil Code in force in the Philippine Islands at the date of the cession provided as follows in regard to prescription: (Translation of the Civil Code in force in Cuba, Porto Rico and the Philippines, 1893, War Dept. 1899, Govt. Ptg. Office:)

> Art. 1930. Ownership and other property rights are acquired by prescription in the manner and under the conditions specified by law.
>
> Rights and actions, of any kind whatsoever, also are extinguished by prescription in the same manner.
>
> Art. 1931. Persons qualified to acquire property or rights by other legal means may also acquire the same by prescription.

Art. 1932. Rights and actions shall extinguish by prescription *to the prejudice of all kinds of persons*, including judicial persons, in the terms prescribed by law.

* * *

Art. 1936. All things which are the object of commerce are capable of prescription.

* * *

Art. 1959. Ownership and other property rights in real property shall also prescribe by uninterrupted possession of the same for thirty years without the necessity of title nor good faith and without distinction between present and absent persons, with the exception mentioned in Article 539."

This Code was admittedly in effect in the Philippine Islands. It was expressly extended to the Islands of Cuba, Porto Rico and the Philippines, by a Royal Decree of Feby. 31, 1889 (2 Alcubilla, 5th Ed., p. 692).

Prior to that time the law as to prescription in the Philippine Islands was precisely similar and was found in the Third Partida, Title XXIX, Laws 7, 18, 21.

Law 7 enumerated certain classes of municipal property in actual public use, such as streets, squares and the like, which were not subject to prescription and provided that everything else could be acquired by 40 years' possession.

Law 18 provided for ordinary prescription of 10 and 20 years, substantially the same as Art. 1957 of the Civil Code.

Law 21 provided for extraordinary prescription, by 30 years' possession without good faith, the same as Art. 1959 of the Civil Code. (See Appendix, pp. 86, 87, 88.)

Is there anything in the nature of real property held by the State which distinguishes it, under the Code, from real property held by individuals? Articles 339 and 340 provide that property belonging to the State other than that used for roads, canals, ports, bridges, walls, fortresses, etc., is *private property*. This private property

of the State is known as patrimonial property. Art. 342 provides:

> "Property of the Royal patrimony is governed by its special law, *and in what is not provided for therein by the general provisions established by this code regarding private property.*"

Art. 345 places the patrimonial property of the State upon the same basis as private property of individuals.

Counsel for the appellee cannot and do not in fact claim that these Code provisions are not applicable to the Philippine Islands (Rosa *v.* Natalio, *et al.*, 7 Phil. Rep., 556). Their claim is that public agricultural lands are excluded from their operation by reason of various public land laws hereinafter mentioned. Nor can it now be maintained that prescription does not apply to lands owned by the Government, since this very question has been passed upon by the Supreme Court of Spain. The Crown of Spain, unlike the English feudal Monarchy, was not immune against the running of time and the maxim *nullum tempus occurrit regi* was never part of the Spanish law.

The question arose in the case of Francisco Aragon Gonzalez, decided by the Supreme Court of Spain, April 16, 1881. The Government sued Gonzalez for the recovery of certain lands which the State had never granted and to which Gonzalez had no other title than that by prescription.

The Court held:

> "That Law 7, Tit. 29, Partida 3, is not applicable and could not have been infringed by the judgment because among the things which said law declares imprescriptible are not included the properties of the State, which, as a legal personality, is subject to the prescriptions of the common law; and no exceptions or privileges can be accorded which the law does not concede." *Jurisprudencia Civil,* vol. 46, p. 9. Madrid, 1882. (Rec., fol. 274.)

This conclusive authority as to the Spanish law was apparently overlooked by the Supreme Court of the Philippine Islands in Valenton *v.* Murciano, because they query whether the general Statute of Limitations would run against the State (p. 540). An examination of the Spanish jurisprudence upon this subject shows that query to be unnecessary, the question having been already authoritatively answered.

See also Sanchez Roman, Vol. 3, pp. 277 *et seq.*, and Alcubilla 1906, p. 602.

Not only has this question been thus set at rest by the highest judicial authority of Spain, but a further examination of its ancient laws establishes the existence of the same rule from the earliest times.

The Sixth Partida, Title 19, Law 10, by granting to the King the same extension of time allowed to minors to demand restitution of property adversely held, shows that prescription was recognized as running against the one the same as against the others. (See Appendix, p. 89.)

The Novisima Recopilacion, Book XI, Title 8, Law 4, is so peculiarly apposite that we quote it in full:

> "*Time necessary to prescribe the dominion of towns, and their civil and criminal jurisdiction, except the Supreme jurisdiction and the Taxes and Tribute belonging to the King.*
>
> "Whereas certain persons in our realms hold and possess certain cities, villages and places, and civil and criminal jurisdiction, without holding therefor our grant, or that of the Kings, our predecessors, and it has been doubted whether such can be acquired against us and our Crown by any lapse of time; we order and command, that immemorial possession, proved pursuant and according to and in conformity with the particulars which the Law of Toro requires, being Law 1, Title 17, Book X, is sufficient to acquire against us and our successors any cities, villages and places whatsoever, and civil and criminal jurisdictions, and whatsoever thing and part thereof, with

the things belonging and appertaining to the dominion and jurisdiction: provided that the said time of the said prescription be not interrupted or broken by us or our representative or others in our name, in fact or in law; but as to the Supreme Civil or Criminal jurisdiction, which Kings have for Royal Majesty and power, which is that of acting and completing where other Lords and Judges fail, we declare that this cannot be acquired or prescribed by said period of time, or by any other; and in the same manner, what the laws say to the effect that the property of the realm cannot be acquired by lapse of time, is understood to mean the taxes and tribute due to us."

(See Appendix, p. 89.)

In like manner the Ordenanzas Reales de Castilla, Book III, Title 13, L. VI, provided "that civil jurisdiction can be acquired against us by lapse of forty years and no less."

The whole doctrine goes back to the foundation of all continental jurisprudence, the Roman Law, and is found firmly entrenched in the great Justinian Code.

We quote as follows:

Book 7, Title 37, C. 1.

The Emperor Constantine to Orphitus:

"It is known that no suit is to be begun by the Fisc concerning vacant property after forty years continuous lapse of time. It is further provided that those who enjoy our bounty are not to be disturbed by any anxiety; nor is any litigation to be begun against them by our Fisc, by whatever title or in whatever manner they may have possessed such property as aforesaid."

Book 7, Title 39, C. 4.

The Emperor Anastasius to Matronianus, pretorian perfect.

"* * * And no right of action, public or pri-

vate, in whatsoever cause, or in favor of whatsoever person, which has been extinguished by non claim, for the aforesaid period of forty years, shall be effective. But everyone owns against any claim whatsoever that which he has possessed without any adverse claim, or judicial proceeding, for the time aforesaid."

Book 7, Title 39, C. 6.

"* * * We command accordingly that those who have possessed anything whatever for a continuous period of forty years without any adverse legal claim, by any form of possession whatever, and even without ownership, are in no wise to be ousted" (saving only the right of the State to taxes).

(See Appendix, pp. 90, 91.)

The only exception was in the case of fraudulent purchasers from Imperial tenants (Book 7, Title 38, C. 2), a provision analogous to that of the Second Partida, Title 7, Law 1. (See App., p. 90 and p. 84.)

Thus we see that ancient Roman legislation and modern Spanish jurisprudence accord in placing the State, in regard to its ordinary property rights, on the same footing as any other legal entity.

So far from there being any doubt whether prescription ran against the Crown in the Philippine Islands under the general law, it would have required special legislation, wholly inconsistent with the general law, to produce any different result. No such law can be cited, for none exists.

Even in English law we find Bracton, whose work was substantially contemporary with the compilation of the Partidas, recognizing certain Crown lands as prescriptible, in the following explicit terms:

"There are also things which belong to the Crown which are not so sacred but that they may be alienated, such as are farms, lands and tenements and the

like, by which the Crown of the King is supported, and in regard to which time runs against the King, just as against any private person whatever." (Bracton, Lib. 2, c. 5, §7, as cited by Story, *J.*, in U. S. *v.* Hoar, 2 Mason, 311. Fed. Cas. No. 15,373.)

The maxim *"Nullum tempus occurrit regi"* appears to have been first applied, and in fact confined, to *franchises,* and only gradually extended to ordinary Crown property, through the efforts of over-zealous Crown lawyers. (See Pollock & Maitland, History of English Law, Vol. I, p. 572, Vol. II, p. 144.) This was in turn corrected by the Statute of 9 Geo. III, 3, c. 16, which established the period of 60 years as sufficient to bar even the Crown's rights in landed property. Thus even this famous maxim was merely a temporary aberration of English law, from which the Spanish law escaped.

POINT IV.

The public land laws in no way repeal, modify or nullify the common or general law.

The remaining inquiry is whether the general Code provisions were limited in their application by anything found in the special laws regulating the disposition of the public lands. If not the General or Common law must prevail.

In the Valenton case, as well as in the opinions of the Courts of First Instance and the Supreme Court in this case, will be found a somewhat detailed review of these special laws. The Supreme Court of the Philippine Islands has not, we respectfully submit, stated the question exactly in saying:

"Did these special laws recognize any right of

prescription against the State as to these lands; and if so, to what extent was it recognized?" Valenton *v.* Murciano, 3 Phil. Rep., at p. 540.

We take it that the question is not whether they specifically recognize any right of prescription, but whether such general right was inapplicable to public lands.

The Supreme Court in the Valenton case reviews the Laws of the Indies and certain special decrees, providing for the disposition of public lands. These laws did not refer to the Indian lands, and can have no application to the holdings of the Cariño family. Waiving this *arguendo,* we find nothing in those decrees modifying the Code enactments. On the contrary these special land laws were for the purpose of facilitating the acquisition of homesteads, ten years usually being a sufficient time to entitle one to a regular grant from the Spanish Government. The Court of Land Registration puts it concisely in referring to one of the decrees mentioned:

"What the decree in question did (and in this it was similar to others), was to hold out special inducements to occupants of public lands that they might be persuaded to secure a record title for their holdings. It was a special modification of the prescriptive period in favor of the occupants. As an added spur it was provided that as to all those coming within the conditions who neglected to take out title, the State would reassert its right and sell the property. This was not a repeal of the law permitting title to be acquired by prescription, as is clearly evidenced by the last paragraph of Article 21, Decree of February 13, 1894, already quoted. It meant simply that as to such lands, exempt for a time from the usual limitations, the State would again be free to exercise its rights.

As an illustration, suppose the Cariño family, on

the date in question (June, 1900), had been in possession of the lands for twenty-six years, without cultivation. Notwithstanding that this occupation would not have given them title by prescription, they could secure composition of title under paragraph 6, Article 6 of the decree. Failing to do this within the time and in the manner provided, the property became once more subject to sale or other disposition by the Government" (Rec., fols. 14-15).

We insist that the purpose sought to be accomplished by such decrees was not the *creation* of titles, but to induce Spanish settlers to secure written evidences of title to lands the ownership of which had already obtained by prescription. The policy of Spain was to secure the settlement and cultivation of unoccupied lands in her colonies, thus increasing her trade and commerce, and as a consequence, her revenues: The settlement and cultivation of the land, however, only partially accomplished her purpose. It was her wish, as it is the wish of Governments everywhere, to have land-holdings registered. In this way only could real estate credit be secured, and that material development be achieved which rests upon the basis of unquestioned ownership of land. The main purpose of such decrees iterated and reiterated by circular and amendment was to induce the people to secure *written evidence of title* to property occupied by them.

The same purpose forms the central idea of the Philippine "Mortgage Law." Its end was the recording of ownership to property. It confers great privileges upon those who so record their ownership and makes the transmission of unrecorded holdings difficult and uncertain. Realizing, however, that the great mass of the people were without record title of any kind a procedure is provided by Sections 389 *et seq.* of such law by which the people can get their ownership of record. Section 390 provides:

"To facilitate the compliance of the preceding

article (relating to the value in evidence of recorded documents) *to owners who lack recorded title of ownership,* no matter at what period the acquisition took place, they shall be permitted to record their interests, etc."

This section expressly recognizes *ownership* of land in those who may not have a record title, and provides a means by which they can get their ownership recorded. It was never required as a condition for such record that the applicant first show that he or his predecessors in interest had secured a government grant. It simply required proof of possession.

It was not the purpose of Spain to dispossess the people of their property, nor to assert the ownership of the State over it. In fact, by most of such decrees, special inducements were offered occupants of lands that they might be persuaded to secure written titles. With scarcely an exception they contain a modification of the ordinary prescriptive period in favor of such occupants, permitting them to record ownership upon an occupation of six, twelve or twenty years. It is somewhat anomalous to read into decrees which specifically recognize prescription, and which establish special periods in favor of the occupiers, a repeal of all prescription.

Much of this legislation appears to have been necessitated by reason of grants made by officers whose authority was questioned or questionable.

In the royal cedula of October 15, 1754 (cited in the Valenton case, p. 545) further provisions are made for the extension of title deeds.

The Supreme Court of the Philippine Islands hold that there could be no title without possession of such deeds. Yet in that law it is said:

"Where such possessors shall not be able to produce title deeds it shall be sufficient if they shall show that ancient possession, *as a valid title by prescription;* provided, however, that if the lands shall

not be in a state of cultivation or tillage, etc." (p. 546).

The Court take the view that "ancient possession" can only refer to grants prior to 1700, mentioned in the following sections. This construction might be debatable, but the question becomes academic by reason of the royal decree of June 25, 1880, providing complete regulations for the adjustment of royal lands. Arts. 4 and 5 read as follows:

> "Art. 4. For all legal effects, those will be considered proprietors of the royal lands herein treated who may prove that they have possessed the lands without interruption during the period of ten years, by virtue of a good title and in good faith.
>
> Art. 5. *In the same manner, those who without such title deeds may prove that they have possessed their said lands without interruption for a period of twenty years, if in a state of cultivation, or for a period of thirty years if uncultivated, shall be regarded as proprietors thereof* (p. 549).

Thus we have a period of thirty years' possession recognized as causing the possessor to be regarded as the proprietor thereof. This would seem to be an explicit statutory recognition of the existence of the general or common law right.

The Supreme Court of the Philippine Islands is evidently troubled by this section, for they say:

> "It must be admitted from the wording of the law that the question is not free from doubt. Upon a consideration, however, of the whole matter, that doubt must, we think, be resolved in favor of the State. The following are some of the reasons which lead us to that conclusion:" (P. 550).

It is respectfully submitted that the reasons which the Supreme Court adduce for the purpose of showing

that the plain language of the Statute is not plain, are wholly unsatisfactory.

Surely the taking of property from one whose possession and that of his ancestors goes back to time "when the memory of man runneth not to the contrary" must be based upon some clear reasons. (Rec., p. 37.)

HISTORY OF THE DEGREE OF 1880 MAKES IT CERTAIN THAT THE LAW INTENDED TO RECOGNIZE ACQUISITIVE PRESCRIPTION.

An important part of the history of the regulations of June 25, 1880, which contain an elaborate Code of Public Land Laws, is contained in the report of the Council of State thereon (to be found in the "Guia de Compradores de Terreños Baldios y Realengos de Filipinas," by Berriz, 1886, pages 17-23). From this report we quote, translating literally rather than idiomatically:

> "The Council of State commends the importance of the subject, showing that almost all property in the Philippines is found in the identical condition of that of Ramirez, wherefore that ordered by the Directorate would disturb in great degree the rights of proprietors (land owners); and in order to avoid such complications it proposes that general rules be promulgated to fix the status of property, upon the basis of determining a period of 20 to 30 years, *within which the possession of land becomes legalized, even though usurpation exists;* that for sales made outside of this period, terms be fixed for making an adjustment between the State and the purchaser according to whether the lands have been placed under cultivation or not. * * *
>
> "* * * In such belief the Council deems that it should commence with the *principle that the lapse of a fixed period legalizes completely all possession,* shortening or lengthening this period according to whether or not there are present good faith and just (color of) title, which are the most important cir-

cumstances or conditions in general law for the prescription of things. * * *

"As to possessors in good faith and under just (color of) title, whether the lands are cultivated or not, it is sufficient without doubt, to establish the ordinary prescription of ten years, since under the especial conditions in the islands and, above all, in view of the necessity and urgency of placing upon a solid basis this class of property in the Archipelago, it would seem to be excessive to exact a greater number of years even treating of uncultivated lands, if any difference were to be established in this regard. But for those who lack title (titulo), possession must be shown for a greater number of years, and there must be established besides the distinction between uncultivated and cultivated lands, since apart from the interest of economic and social order which commend the facilitation of the acquisition and the ownership of said lands, there should not be forgotten the doctrine of law which can never consent to the leveling of the possessor with title and him who lacks same, nor to rewarding equally him who, by his labors, has purged in a certain degree the vice of his acquisition, contributing furthermore to augment the common wealth, and him who has not employed his forces and capital in the cultivation of what he has usurped; an equal distinction it is also proper to adopt for the cases of adjustment which will obtain in the case of all persons who cannot be considered proprietors by prescription" (*i. e.*, those whose possession has been for less than the fixed period). * * *

"* * * In resumé, it being the purpose to constitute and fix the ownership of former public lands in the Philippines by the uninterrupted possession of the same, the Council, omitting discussion of the other doctrines which are recommended, which it considers acceptable in general and which are not

so directly related with that high purpose, deems it proper to adopt the three following bases:

"1. There shall be considered as owners, *for all legal purposes,* of the lands in question, those who may establish that they have possessed the same without interruption during ten years under just (color of) title and in good faith.

"2. Equally there shall be considered as owners those who, lacking title, may establish that they have possessed the said lands without interruption for 20 years, if the same are found under cultivation, and for 30 years if the said lands are found uncultivated; and

"3. The interested parties who are not found included in the two preceding provisions *may legalize* their possession *and, therefore, acquire ownership* of the said lands, by means of adjustment in accordance with the price at the original adjudication, or at the time of the entry thereon if cultivated lands are in question, and with the price they may have at the time of the claim, if they are uncultivated lands."

The language of this report, upon which the regulations of June 25, 1880, were adopted, leaves no doubt as to the intention of the lawmakers as expressed in said regulations. The repeated reference to the acquisition of ownership by mere lapse of time; the avowed intention to recognize as owners those whose possession had ripened into title, and the significant distinction made between those recognized as owners by prescription and those who, as occupants of public lands were not possessed thereof for a sufficient period, and who were required to pay its value—or, in other words, to acquire ownership by purchase—all demonstrate to a certainty that the patents issued by virtue of these regulations were not intended to operate as grants, but as a recog-

nition of vested rights acquired by continued possession. The State conferred written evidence of title under these regulations, not ownership. Ownership was acquired by the lapse of the period of prescription, and was formally recognized and evidenced by the issuance of the patent.

In this connection it is important to note carefully that the dual use of the English word "title" is not applicable to the Spanish "titulo." We speak of "having title" and "giving title," meaning thereby "being the owner" and "transferring ownership"; we also employ the word "title" in a distinct sense meaning the tangible evidence of ownership. The Spanish word *"titulo"* is employed only in this latter sense. Where the regulations provide, therefore, that the State shall issue a *"titulo"* in favor of owners of public lands who have acquired ownership by prescription, it cannot be interpreted to mean that a grant shall be made in favor of these owners, but only that a paper title shall be issued evidencing and recognizing their ownership. In fact, their ownership is expressly recognized, and as owners no grant is needed nor could a grant in their favor convey anything to them or add anything to their ownership. On the other hand, "the interests of economic and social order" are subserved by causing the issuance of recorded paper title, and this is expressly avowed as the purpose and motive of the legislation in question.

The distinction between *"dominio"* (ownership) and *"titulo"* (title, so called) is both plain and vital, and is emphasized throughout the Spanish law.

Article 348 of the Civil Code, defines ownership as follows:

> "Ownership (*dominio*) is the right to enjoy and dispose of a thing, without further limitations than those established by law."

Article 1930 provides:

> "Ownership (*dominio*) and other property rights are acquired by prescription in the manner and under the conditions specified by law."

One of these conditions in case of *ordinary* prescription (less than 30 years) is by Art. 1940 a "proper title," (*"justo titulo"*). A "proper title" is then defined by Article 1952 as follows:

> "By a proper title (*titulo*) is understood that which legally suffices to *transfer* the ownership (*dominio*) or property right, the prescription of which is in question."

"Extraordinary" prescription is then provided for by Art. 1959:

> "Ownership (*dominio*) and other property rights in real property shall also prescribe by uninterrupted possession of the same for thirty years without the necessity of title (*titulo*) or good faith."

The necessary conclusion from these provisions is that thirty years' possession takes the place of title (*titulo*) in the sense of an explicit *"transfer"* of ownership, and of itself confers or vests ownership (*dominio*) without any further requirement in the way of grant, conveyance or registry. It does not need to support itself upon the presumption of a lost grant, as in English common law; on the contrary, it expressly dispenses with the necessity of any grant, actual or presumed.

Alcubilla also defines *"titulo"* as the "juridical inception of the acquisition of property" (*el origen juridico de la adquisicion*), and points out that in many Articles of the Civil Code and in the Mortgage Law the word is used in a still more limited sense as the "registrable *instrument*, or the instrument which *evidences the acquisition* of ownership" (vol. 8, p. 836, note 3).

Moreover, the ownership (*dominio*) thus acquired is the same as absolute "legal title" in fee simple in the English common law sense. It is the broadest possible word to express complete dominion, and there is no shadow of justification for attempting to limit it to a

mere "equitable claim." (Rec., fol. 293.) The Spanish law is not encumbered by painful distinctions between "legal" and "equitable" titles and estates, and when it says ownership (*dominio*) it means ownership and not mere usufruct (*usufructo*), a wholly different legal conception (Civ. Code, Art. 467, *et seq.*)

Therefore, when Mateo Cariño or his ancestor had had possession of the land in suit for 30 years, he had the full absolute legal ownership, or as we would say the "legal estate in fee simple"; he needed no grant; he needed no registry, except for evidentiary purposes; and he was entitled to this purely evidentiary registration under the original "Land Registration Act" of 1902 (Sec. 19, Clause First), without regard to the Public Land Act of 1903, or its extension to Benguet in 1905. That furnishes a means of "*perfecting*" or confirming land ownership; his ownership was already perfect by law, and only required registry to perpetuate the evidence of his ownership, and to facilitate its transfer.

It has been argued that the recognition of the possessors of public lands for the required period, as the owners thereof, is not complete because each is required to "do something" before paper title is issued to him. An examination of the regulations discloses that the only thing which such a person is required to do is to make proof of his ownership. It is respectfully submitted that this does not support the conclusion that the ownership is not complete. Indeed it is difficult to conceive how anything less could have been required. Where the law provides that a paper title to lands shall be issued to the owners thereof, it goes without saying that he who applies for such paper title must prove himself the owner by showing the facts of his adverse possession. And any express requirement to this effect in the law does not argue that the adverse possessor's title is incomplete, but rather that the State has adopted an absolutely necessary precaution that the paper title shall be issued to the real owners; nothing more.

POINT V.

The Spanish decrees could not legally have had the effect claimed for them by the Supreme Court of the Philippine Islands in the Valenton case.

Conceding to the Royal Decrees of Spain, for the sake of argument, the greatest possible effect claimed for them in the Valenton *v.* Murciano decision, what do they attempt to do? They recognize, in the first place, a prescriptive title in certain persons, which titles are declared to be good for all legal purposes. They then, it is claimed, seek to provide, as a penalty for failure to record such titles, a reverter, without further proceedings, judicial or otherwise, to the State. Argument is needless to show that under the decisions of our Courts such an enactment would be held unconstitutional and void. It is equally unconstitutional and void under the constitution and laws of Spain.

Law I, Title 34, Book II, Novisima Recopilacion, fixes the punishment of him who by force shall take the goods that another possesses, even though he has a right to them, while Law 2 orders *that no one shall be deprived of his property without first being summoned, heard and conquered by law.* Alcubilla, Vol. 8, p. 776, note 4.

Art. X of the constitution of Spain, adopted June 30, 1876, provides as follows:

> "There shall never be imposed the penalty of con-
> "fiscation of goods, nor shall any one be deprived of
> "his property unless it be by competent authority
> "and for public utility, there being always a corre-
> "sponding indemnity paid in advance. If this re-
> "quisite shall not be complied with, the judges will
> "protect, and if proper, deliver the possession to the
> "one deprived."

This is the equivalent in every respect of the due process of law clause of our constitution.

Careful examination of the provisions of the Laws of the Indies and of the special decrees relating to Public Lands show that the reversion to the State does not apply to lands held by prescriptive right. The Spanish law seems sedulously to avoid any interference with such rights, for we find in one of the very laws cited by the Court below an explicit recognition of the rights of those who hold by prescription. (Laws of the Indies, Book 4, Tit. 12, Law 14, *supra.*)

Article VIII of the Regulations of 1880, cited in support of the theory of reversion of lands held by prescriptive right, does not bear out this view, for it refers to

> "the lands whose possession *they are unlawfully* "enjoying." (Rec., fol. 303.)

Property held by "just prescription" could not be deemed included in this category.

POINT VI.

The plaintiff in error Cariño had, under the Treaty of Paris, a property right, the existence of which has been recognized by Congress.

The Treaty of Paris declares that the cession of the Philippines

> "cannot in any respect impair *the property or rights* "*which by law belong to the peaceful possession of* "*property of all kinds,* of provinces, municipalities, "public or private establishments, ecclesiastical or "civic bodies, or any other associations having legal "capacity to acquire and possess property in the "aforesaid territories renounced or ceded, or of pri-

"vate individuals, of whatsoever nationality such "individuals may be."

(Compilation of Treaties in Force (1904), p. 725.)

If Mateo Cariño possessed any property right or interest in the lands in question, he is clearly protected by the treaty as well as by the settled rules of international law prevailing among civilized nations. It is idle to contend that any property right, whether evidenced by written and formal deed or not, is left unprotected by the treaty.

"The right of property, then, is protected and se- "cured by the treaty; and no principle is better set- "tled in this country, than that an inchoate title to "lands is property.

"Independent of treaty stipulation, this right "would be held sacred. The sovereign who acquires "an inhabited territory, acquires full dominion over "it; but this dominion is never supposed to divest "the vested rights of individuals to property."

Delassus *v.* United States (1835), 9 Peters, 133.

And again in speaking of the Louisiana treaty, this court has said:

"It was never doubted by this Court that prop- "erty of every description in Louisiana was pro- "tected by the law of nations, the terms of the treaty "and the Acts of Congress; nor that in the term "'property' was comprehended every species of "title, *inchoate or perfect,* embracing those rights "which lie in contracts; those which are executory, "as well as those which are executed. In this re- "spect the relation of the inhabitants to their gov- "ernment is not changed. The new government "takes the place of that which has passed away."

Congress in dealing with the recent Insular acquisitions has shown no disposition to violate this principle, as appears from the following sections of the Act temporarily to provide for the affairs of civil government in the Philippine Islands, of July, 1902. The unwillingness of Congress to permit any one living upon the public lands to suffer damage, injury or diminution of right, by reason of the cession, plainly appears in the following sections of the above Act:

"SECTION 12. That all the property and rights "which may have been acquired in the Philippine "Islands by the United States under the Treaty with "Spain, signed December 10, 1898, except such land "or other property as shall be designated by the "President of the United States for Military and "other reservations of the Government of the United "States, are hereby placed under the control of the "Government of said Islands to be administered for "the benefit of the inhabitants thereof, except as "provided in this Act. * * * "

"SECTION 14. That the Government of the Philip-"pine Islands, is authorized and empowered to en-"act rules and regulations and to prescribe terms "and conditions to enable persons to perfect their "title to public lands in said Islands, who prior to "the transfer of sovereignty from Spain to the "United States, had fulfilled all or some of the condi-"tions required by the Spanish laws and royal de-"crees of the Kingdom of Spain for the acquisition "of legal title thereto, yet failed to secure convey-"ance of title; and the Philippine Commission is au-"thorized to issue patent without compensation, to "any native of said Islands, conveying title to any "tract of land not more than sixteen hectareas in "extent, which were public lands and had been act-"ually occupied by such native or his ancestors prior "to and on the 13th of August, 1898."

And as indicating the fear of Congress lest injustice should be done to those who had settled on the public domain, the 16th Section of the Act is significant:

> "That in granting or selling any part of the pub-
> "lic domain, etc., preference in all cases shall be
> "given to actual occupants and settlers; and such
> "public lands of the United States in the actual pos-
> "session or occupancy of any native of the Philip-
> "pine Islands shall not be sold by said Government
> "to any other person without the consent thereto of
> "said prior occupant or settler first had and ob-
> "tained."

Is the protection accorded to such squatters to be refused to Cariño, whose ancestral squatting was prehistoric? Except where the dictum of the famous Prudhomme *"la propriété c'est le vol"* is law, such ownership would be protected anywhere in the world. Even had Cariño had a mere inchoate right or unperfected title he would have been protected from spoliation.

In pursuance of the powers devolved upon them by this legislation, the Philippine Commission promulgated a Land Law known as the Public Land Act, (Act No. 926, Compilation of Laws and Regulations Relating to Public Lands in the Philippine Islands, War Department, Bureau of Insular Affairs, 1908.) Chapter VI of this Law deals with "Unperfected Titles and Spanish Grants and Concessions."

> "SECTION 54: The following described persons
> "or their legal successors in right, occupying public
> "lands in the Philippine Islands, or claiming to own
> "any such lands or an interest therein, but whose
> "title to such lands has not been perfected, may ap-
> "ply to the Court of Land Registration of the Philip-
> "pine Islands for confirmation of their claims and
> "the issuance of a certificate of title therefor, to
> "wit:

* * * *

"4. All persons who were entitled to apply and "did apply for adjustment or composition of title to "lands against the Government under the Spanish "laws and royal decrees in force prior to the royal "decree of February thirteenth, eighteen hundred "and ninety-four, but who failed to receive title "therefor through no default upon their part;

* * * *

"6. All persons who by themselves or their pre- "decessors in interest have been in the open, con- "tinuous, exclusive, and notorious possession and "occupation of agricultural public lands, as defined "by said Act of Congress of July first, nineteen "hundred and two, under a bona fide claim of own- "ership except as against the Government, for a "period of *ten years* next preceding the taking effect "of this Act, except when prevented by war or force "majeure, shall be conclusively presumed to have "performed all the conditions essential to a Govern- "ment grant and to have received the same, and "shall be entitled to a certificate of title to such land "under the provisions of this chapter.

"All applicants for lands under paragraph one, "two, three, four, and five of this section must es- "tablish by proper official records, or documents "that such proceedings as are therein required were "taken and the necessary conditions complied with: "Provided, however, That such requirements shall "not apply to the fact of adverse possession."

The Philippine Commission, as well as Congress, evidently considered that they were merely providing record titles for those who had already acquired property rights guaranteed by the Treaty of Paris. In so doing, Congress and the Commission were complying with their

duty under the Law of Nations. As was recently said by the Supreme Court of the Philippine Islands,

> "The Treaty of Paris not only safeguarded the "right of ownership, but also such rights as pertain "in accordance with law to the peaceful possession "of property of all kinds."
>
> Alfonso Buenaventura *v.* Commanding General, 6 Phil. Reps., p. 607. (Nov., 1906.)

It appears that at the time Cariño's application was made, the Public Land Law (No. 926) had not been extended to the province of Benguet, and upon this fact the Court of First Instance, based its reversal of the judgment of the Land Court.

We have adduced the Act of Congress and the Public Land Law of the Commission for the purpose of showing that Cariño had a property right which the United States has recognized. If he had such property right he could not be deprived of it by any failure of the Philippine Commission (or even of Congress) to pass appropriate legislation enabling him to obtain a record title. Why there was delay in extending the law to Benguet does not appear from the record nor are we informed *aliunde*. The Commission did finally so extend it in 1905. (See Compilation of Laws & Regulations relating to Public Lands in the Philippine Islands. Govm't Ptg. Office, Feby. 1, 1908.) Probably reasons of convenience dictated the delay. But the appellant here does not claim that his rights are in any way derived from or are dependent upon Act 926 of the Philippine Commission. They were rights in existence a century or so before the promulgation of the Treaty of Paris, hence the Court of Land Registration had jurisdiction to register the title.

The case of Alfonso Buenaventura *v.* Commanding General (6 Phil. Rep., 606), decided nearly two years later than the Valenton case, it is respectfully submitted, is in hopeless conflict with the premises upon which the judgment in the Valenton case was predicted. In that

case it was held that a native of the Philippine Islands who has been in possession of a tract of land, for a period of ten years or more, and who had on the date of the Treaty of Paris an inchoate title, has the right to have the same registered. This right was maintained although the land claimed was within the limits of a military reservation, set apart under the authority of the President of the United States.

In the Valenton case, the Court held that the claimant who had occupied the land over thirty years, but had received no paper title thereto, was without any rights of property, and that until he obtained such "deed" the State remained the absolute owner. (3 Phil. Reps., p. 543) and the Court concludes on the point by saying:

> "We hold that from 1860 to 1892 there was no law "in force in these Islands by which the plaintiffs "could obtain the ownership of these lands by pre- "scription, without any action by the State, and that "the judgment below declaring the defendant the "owner of the lands must be affirmed." (P. 557.)

And yet we find the same Court holding in the Buenaventura case that the Act of Congress and the Philippine Land Laws referred to, merely carried out the Treaty obligation to recognize existing rights:

> "The evident intention of Congress was to recog- "nize three classes of lands in these Islands: (1) "Lands of private ownership; (2) lands of purely "public character; and (3) lands occupied or "claimed, with some semblance of equity, by private "parties, but in respect to which there exists no "known grant from the Government. * * * "With respect to the third class, Congress directed "that patents should be issued to the occupants who "were established thereon or to persons who had "acquired equities therein, and that the ownership "of such occupants, equitable owners of said lands "should be confirmed. * * *
>
> "To assert that Congress had the intention of

"authorizing the confirmation of inchoate titles in "the native residents of Bulacan and to refuse a "like privilege to the residents of Corregidor Is- "land is to suppose unjust, illogical, unnatural, and "very unequal legislation, and to doubt the benefi- "cent purposes of the American nation toward the "Filipino people." 6 Phil. Reps., p. 606.

Why it should have appeared unjust to discriminate in favor of Bulacan residents as against those of Corregidor in November, 1906 (date of Buenaventura decision), yet just to discriminate against natives of Benguet in favor of those in other portions of the Archipelago in December, 1906 (date of Cariño decision), we are unable to surmise. In November the Court says:

"Can we attribute to Congress the intention of "extending their favor to some Filipinos and of re- "fusing it to others in like conditions, determining "the selection by chance or in accordance with geo- "graphical limitations?

"As a matter of fact, within the limits of a mili- "tary reservation already established or to be es- "tablished hereafter, there may be found land of pri- "vate ownership, with a perfect and complete title, "or land which has not yet passed to private owner- "ship, but which is in the possession of a private "party, or to which the private party has an initial, "imperfect and incomplete title."

The apparently so quickly shifting views of the Honorable Court cannot have been due to inadvertence, for one of the Judges dissented on the ground that the case was wholly inconsistent with the decision of the Court in the case at bar, the decision in which, although published a month later, seems to have been made earlier.

CARSON, *J.*, dissenting, p. 609, says:

"The invalidity of the applicant's claim of title

"based upon either the first or second grounds, ap-
"pears to be conclusively settled by the as yet un-
"published decision of this court in the case of Mateo
"Cariño *v.* The Insular Government."

6 Phil. Reps., p. 610.

The learned dissenting Justice takes the short and simple, although as we submit, unsound position that prescription could confer no rights to public lands under the Spanish law and that, therefore, neither the Treaty provision, the Sections of the Act of the Philippine Law above quoted, nor the Public Land Laws of the Philippine Islands could apply to persons who claim by mere adverse possession.

"But I think it has been shown in accordance with
"the general doctrine laid down by this court in such
"cases, that the mere possession of public agricul-
"tural lands for however long a period of time prior
"to the transfer of sovereignty from Spain to the
"United States does not give the occupant an equit-
"able or an imperfect title as against the United
"States; and, therefore, even were we to admit
"the authority of the Commission to vest title in
"occupants of public lands within military reserva-
"tions, under the provisions of the first paragraph
"of this section, the applicant in this case cannot
"set up a claim by virtue of such legislation."

6 Phil. Reps., pp. 617, 618.

We respectfully submit that the learned dissenting Justice is surely logical in believing the Buenaventura case to be wholly irreconcilable with the Valenton case. The Buenaventura case appears to be the latest utterance of the Supreme Court of the Philippine Islands. It makes no reference to either of the other cases, and the land law of the Philippine Islands upon the question of adverse possession must remain in a condition

of untempered chaos until this Court has spoken the final word.

The two cases cannot be reconciled. Even that potent instrument of legal development the "distinction" fails. Either Mateo Cariño had something that was protected by the Treaty or he had not. If he had not, the judgment of the Supreme Court is logical for he does not claim to have acquired other rights since 1898. If he had any property rights of any kind, recognized by the Treaty, the judgment of the Supreme Court is wrong and the judgment of the Court of Land Registration must be affirmed.

The somewhat nihilistic views of property entertained by the Philippine Supreme Court in the Valenton and Cariño cases are not in accordance with those entertained by this Court. For we find it said in one of the leading cases on the subject of ancient grants:

> "This court has defined property, to be any right, "legal or equitable, inceptive, inchoate or perfect, "which, before the Treaty with France in 1803 or "with Spain in 1819, had so attached to any piece or "tract of land, great or small, as to affect the con- "science of the former sovereign 'with a trust,' and "make him a trustee for an individual, according "to the law of nations, of the sovereign himself, the "local usage or custom of the colony or district; ac- "cording to the principles of justice, and rules of "equity." Strother *v.* Lucas (1838), 12 Peters, p. "436."

As we have shown under Point I, the Court of Land Registration had full jurisdiction in the premises, without regard to Act 926, which we have referred to merely to show the general policy and attitude of the government towards Philippine property rights.

Act 926 being now in force in Benguet, Cariño should be allowed to register his land even assuming, as the

Court of First Instance did, that he had only an "*imperfect*" title.

An affirmance of the judgment in this case would, we respectfully submit, minimize the effects of Art. VIII of the Treaty of Paris, run contrary to the general rule of international law, and be at variance with both the intentions of Congress and the laws of the Philippine Commission for the protection of those who had lived from time immemorial upon certain lands, but who had for any reason neglected or been unable to obtain formal evidence of ownership. That such evidence was not always easy to obtain appears from the preface to the Compilation of Laws and Regulations heretofore referred to, from which it appears that the area of public domain in the Philippine Islands according to some estimates reached as high as one-half the area of the Archipelago:

> "The land is most fertile and for the greater part "naturally irrigated. There was a very great de- "mand for this land, but owing to the irregularities, "frauds and delays in the Spanish system, the "natives generally abandoned efforts to secure a "good title and contented themselves with remaining "on the land as simple squatters, subject to eviction "by the State."

Under all these circumstances, it would be a strange anomaly to deny Mateo Cariño's legal ownership of the land which has been so long in the possession of his ancestors and inherited and possessed by him under the law of his people. Not only would such a result be repugnant to elementary notions of common justice, and to the Treaty, the Act of Congress and the Laws of the Philippine Commission, but it would also be in conflict with the present American rule in the Philippine Islands as to title by adverse possession, which Law (being Section 41 of Act 190 of the Philippine Commission) reads as follows:

> "Ten years actual adverse possession by a person

"claiming to be the owner for that time of any land "or interest in land, uninterruptedly continued for "ten years by occupancy, descent, grants or other- "wise, in whatever way such occupancy may have "commenced or continued, shall vest in every actual "occupant or possessor of such land a full and com- "plete title, saving to the persons under disabilities "the rights secured by the next section. In order to "constitute such title by prescription or adverse "possession, the possession by the claimant or by "the person under or through whom he claims must "have been actual, open, public, continuous, under a "claim of title exclusive of any other right and ad- "verse to all other claimants. But failure to occupy "or cultivate land solely by reason of war shall not "be deemed to constitute an interruption of posses- "sion of the claimant, and his title by prescription "shall be complete, notwithstanding such failure to "occupy or cultivate the land during the continuance "of war." (Philippine Code of Civil Procedure, Sec. 41.)

Criticism of the Valenton Case.

As it was upon the authority of this case that the Philippine Supreme Court defeated the plaintiff we crave indulgence for discussing the views of that court to a length which may appear tedious.

The grounds upon which the Court bases its decision will be taken up *seriatim*.

(1) The Royal Decree of 1880 supra p 47 only confers rights upon those who can show proof of occupancy under this very Decree.

Thus the court look upon this decree as narrowing rather than as recognizing Cariño's rights. We do not find anything in these regulations in the nature of expropriation. Under Articles 4 and 5 no titles or rights are created, but rights already acquired are fully recognized. Is it fair to construe this statute to the effect that since Cariño did not immediately bring proceedings

under it he, therefore, forfeited the rights otherwise consequent upon thirty years' peaceful and undisturbed possession under claim of title? Art. 4 refers to those who have already a title deed. Did they too have no property right?

Again it will be noted that Articles 4 and 5 do not provide that the possessors of public lands for the required periods *may acquire* the ownership, nor does it contain any other provision which could by any possibility indicate that anything remained to be acquired by such possessors other than a "*titulo*" or tangible evidence of ownership. On the contrary, it provides that he who shows such possession shall forthwith be considered as owner of the lands for all legal purposes. On the other hand, Article 6 (applicable to persons whose possession had not covered the required period), provides that such persons "may acquire the ownership" of such lands, by certain means. This language is in sharp contrast to the language employed in Articles 4 and 5. The provision that those whose proven possession covers the prescribed period shall be considered owners, coupled with the provision that possessors for shorter periods might "acquire ownership," indicates unquestionably that the first named had already acquired ownership, and that the regulations were not necessary, nor intended, to perfect such ownership, but merely to provide for the issuance of written evidence thereof in the shape of a "*titulo*" or patent. The language of the report of the Council of State (above quoted) wherein it is expressly laid down, as the fundamental doctrine upon which these regulations are justified, that possession of public lands ripens into complete ownership, is a complete corroboration of this argument.

(2) The 1st article of the Decree declares that those lands as to which the State has never executed any deeds are the property of the State and such a declaration is inconsistent with the idea that title may be obtained by prescription.

As a general proposition this does not seem at all convincing, but as Art. 5 (and the other decrees as well), shows that the doctrine of ancient possession was also recognized, such generalities are not germane.

(3) The Spanish word in the preamble of the Decree "detentados" meant "wrongfully withheld" and this idea of wrongful detention is inconsistent with the idea that by Art. 4 the plaintiff in 1870 became the absolute owner of the lands in question and is absolutely inconsistent with the idea that good title could be obtained by uninterrupted possession.

This mere verbal criticism appears to us wholly inconsistent with the spirit of the law which expressly regards as proprietors those who, without deeds, have possessed uncultivated land for a period of thirty years.

It will be further noted that the word "detentados" is not employed in the body of the regulations, but solely in the approval thereof by the Colonial Minister; also that the word "detentados" is employed repeatedly in the report of the Council of State, recommending the promulgation of these regulations, which constitute an authoritative commentary of the law. As employed in the approval of the Colonial Minister, it is plainly a word of general description, signifying the public lands which have been usurped, at one time or another, by private persons. Of course, all adverse possession is a wrongful withholding until such time as by the lapse of the period of prescription it ripens into title. It is not significant that all public lands in the possession of third persons should thus be referred to, in general terms in which no distinction is made between those possessed for the prescribed period and those possessed only for a shorter time, as usurped land.

On the other hand, it will be noted that the word "detentado" is employed in the report of the Council of State only with reference to the lands possessed by private persons for less than the period of prescription. If

any argument whatever is to be based upon the use of this word, it is that its careful use with reference only to adverse possession for less than the period of prescription indicates that land acquired by lapse of the said period has ceased to be "detentado" or wrongfully withheld, although its usurpation was necessarily wrongful or illegal in its incipiency.

(4) The Supreme Court affects to consider that certain language in the preface of this decree and regulations shows that those

> "who held with color of title and good faith were, notwithstanding, holding wrongfully, and that true ownership should be substituted for their possession." (Pp. 551-2.)

The phrase referred to, upon which this inference is based, is as follows:

> "These regulations refer not only to tenants of royal lands in good faith and by virtue of a valid title, but also to those who, lacking these, may, either by themselves reducing such lands to cultivation or by the application of intelligence and initiative, causing their cultivation by others who lack these qualities, be augmenting the wealth of the Archipelago." (P. 551.)

It is respectfully submitted that the fourth reason is destructive of the third, for the language of this preface refers to the tenants of royal lands *in good faith* and by virtue of a valid title, and we fail to see how such persons could be considered as wrongful detainers of such property without completely confounding plain language.

(5) The fifth reason is based upon the circular of August 10, 1881, published in the Gaceta de Manila, August 11, 1881. It is as follows:

"Should possessors of royal lands under color of title and in good faith seek adjustment?

It is evident that they must do so, for it is to them that article 4 of the regulations refers, as also the following article covers other cases of possession under different circumstances. It should be well understood by you, and you should in turn have it understood by others, that the adjustment of lands whose ownership has not passed to private individuals by virtue of cession by competent authorities, is optional only for those within the limits of the common district (legua comunal) as provided by article 7. In all other cases where the interested parties shall fail to present themselves for the adjustment of the lands occupied by them they shall suffer the penalties set forth in article 8 of said regulations."

In addition to the fact that it does not appear by whom this circular was written we do not see that it militates against our contention that thirty years' possession was recognized as constituting the possessor a proprietor. Doubtless the Spanish Government might have imposed penalties for the non-registration of title deeds or the non-proving of title required by prescription. This would not detract from the plain language of the Code and of the law in question.

Moreover, Article 8 expressly referred only to those "unlawfully enjoying" public lands which could not apply to lawful owners by prescription.

In this circular no attempt is made to distinguish between possessors who have so held their lands for the period fixed for prescription and those who have so held for a shorter period. It must be deemed as applicable only to the latter class, for the reason that as to the former the threatened forfeiture would be inoperative and impossible as contrary to the organic law prohibiting forfeiture of property.

(6) The next reason adduced by the Supreme Court is that a royal decree of September 24, 1884, evidently intended that claimants by prescription should prove their rights.

We see nothing in this law inconsistent with our view of the case. On the contrary, Article 11 says:

> "If the adjustment is not free, because the applicant has not proved his right by prescription, then no deed can be issued until the proper payment has been made.
>
> * * *
>
> If no protest or claim shall be filed, and the adjustment must be free because the occupant *has proved title by prescription,* as provided in articles 4 and 5 of the regulations promulgated June 25, 1880, the proceedings shall be duly approved, and the head officer of the province will, in his capacity of deputy director general of the civil administration, issue the corresponding title deed."

In addition to the laws mentioned, Justice Willard in writing the decision of the Supreme Court in the case at bar (fol. 303) refers to the Royal Decree of the 13th of February, 1894, in which it is provided, Article 4, that the title to all agricultural lands which were capable of adjustment under the Royal Decree of the 25th of June, 1880, but the adjustment of which has not been sought at the time of the promulgation of this decree in the Gaceta de Manila, will revert to the State. Any claim to such lands by those who might have applied for the adjustment of the same, but who have not done so at the above mentioned date, will not avail them at any time.

He seems, however, to have overlooked the latter part of Section 21 of such decree, which provides that "persons in possession, not included in the provisions of this chapter, *can have prescriptive title to alienable Crown lands, according to the common law.*" The common law, of course, meant the general law contained in the

Civil Code. That this term applies to the law of prescription in the Code is further evident from Sec. 35 of the mortgage law.

It would seem to us that the Supreme Court of the Philippine Islands has failed to differentiate between the possession of property rights and mere modes of proof. The Statutes referred to generally apply to two things:

First, the acquisition by the possessor or settler of a portion of the public land.

Second, the record of evidence of ownership by those who were claiming title under written instruments or by prescription.

Is there anything here in conflict with the Civil Code? On the contrary by the cultivation of the lands one could acquire it ten years sooner than under the general law. The uncultivated land alone need be held as long as provided for in the Code.

In addition thereto, the recognition in the decree of 1894 of the existence of the common law establishes that the land laws were not in derogation of that rule, but merely prescribed shorter periods of time during which public lands might be acquired.

Aside from its unsoundness on legal grounds, the decision in Valenton *v.* Murciano is distinguishable from the case at bar. There the Court expressly found that in 1860 the land in suit belonged to the State; here it appears to have belonged to Cariño's ancestors from time immemorial. There the Spanish authorities had expressly granted the land to the adverse claimant, and the Spanish laws provided a remedy against such a grant of which the plaintiff had never availed himself. There the Court merely permitted an existing injustice, committed by the Spanish authorities, to remain in effect after the treaty the same as before; here the Court below has itself disregarded the plaintiff's rights, in spite of the treaty. And finally, that was an ejectment suit, in which

the plaintiff must prevail, if at all, by the superior strength of his own title; while this is a peculiar statutory proceeding designed to facilitate the establishment and perpetuation of just such titles as that of the plaintiff, legally perfect, and lacking only record evidence.

There is neither evidence nor finding that the Spanish Government ever owned or claimed the land; in fact the finding is to the contrary, and the Philippine Government is a mere intruder, with neither legal title nor just claim.

Conclusion.

In conclusion we sum up the argument as follows:

(1) Cariño had a valid, undisputed title to the land by the law in force in the locality, and under the Spanish laws guaranteeing and confirming the titles of the Indians. His title is, therefore, property *jure gentium* and cannot be taken from him by the Government without violating the Treaty of Paris and the Constitution of the United States, since the right of property in land is a fundamental or natural right to which the Fifth Amendment applies as well in unincorporated as in incorporated territory of the United States.

(2) But even assuming that the native inhabitants of the islands had no rights which either Spain or the United States were bound to respect, yet under the Spanish law of prescription the appellant had acquired property rights which could not be affected by the change of sovereignty.

(3) The decisions of this Court, the action of the Treaty making power, and the Acts of Congress and the Philippine Commission indicate a clear intention to leave all individual property rights unaffected by the cession. The decision in this case constitutes an anomaly irrecon-

cilable with other decisions of the Insular Supreme Court, is contrary to the ancient Spanish law, the Spanish Civil Code, the Spanish Constitution, the Treaty, and the United States Constitution, and should be reversed.

All of which is respectfully submitted this 20th day of November, 1908.

FREDERIC R. COUDERT,
CHARLES C. COHN,
D. R. WILLIAMS,
HOWARD THAYER KINGSBURY,
Of Counsel for Plaintiff in Error,
2 Rector Street, N. Y.

APPENDIX.

SPANISH AND LATIN TEXTS QUOTED FROM IN BRIEF.

RECOPILACION DE LEYES DE LAS INDIAS.

Libro Segundo.

Titulo I.

De las Leyes, Provisiones, Cedulas y Ordenanzas Reales.

Ley IV.

El Emperador Don Carlos y la Princesa Doña Juana Gobernadora, en Valladolid, à 6 de Agosto de 1555.

Que se guarden las leyes que los Indios tenìan antiguamente para su gobierno, y las que se hicieren de nuevo.

Ordenamos y mandamos, que las leyes y buenas costumbres que antiguamente tenìan los Indios para su buen gobierno y policìa, y sus usos y costumbres observadas y guardadas despuès que son cristianos, y que no se encuentran con nuestra sagrada religiòn, ni con las leyes de este libro, y las que han hecho y ordenado de nuevo se guarden y ejecuten; y siendo necesario, por la presente las aprobamos y confirmamos, con tanto que Nos podamos añadir lo que fuèremos servido, y nos pareciere que conviene al servicio de Dios nuestro Señor, y al nuestro, y à la conservaciòn y policìa Cristiana de los naturales de aquellas Provincias, no perjudicando à lo que tienen hecho, ni à las buenas y justas costumbres y Estatutos suyos.

Ley V.

El Emperador Don Carlos, en Toledo, à 4 de Diciembre de 1528, cap. 15. Y à 24 de Agosto de 1529.

Que las leyes que fueren en favor de los Indios se executen sin embargo de apelaciòn.

Deseando la conservaciòn y acrecentamiento de nuestras Indias, y conversiòn de los naturales de ellas à nuestra Santa Fè catòlica, y para su buen tratamiento, hemos mandado juntar en esta Recopilaciòn todo lo que està ordenado y dispuesto en favor de los Indios, y añadir lo que ha parecido necesario y conveniente. Y porque nuestra voluntad es, que se guarde, y particularmente las leyes que fueren en favor de los Indios, inviolablemente: Mandamos à los Virreyes, Audiencias, Gobernadores, y à los demàs Jueces y Justicias, que las guarden y cumplan, y hagan guardar, cumplir y ejecutar en todo y por todo, sin embargo de apelaciòn ò suplicaciòn, sò las penas en ellas contenidas, y demàs de la nuestra merced, y de perdimiento de todos sus bienes para nuestra Càmara y Fisco, y suspensiòn de sus oficios.

Libro Cuarto.

Titulo I.

De los Descubrimientos.

Ley VI.

El mismo, (Don Felipe II) Ordenanza 29 de poblaciones. Don Felipe III, en Madrid, à 11 de Junio de 1621. Don Carlos II y la Reina Gobernadora.

Que en las capitulaciones se excuse la palabra conquista, y usen las de pacificaciòn y poblaciòn.

Por justas causas y consideraciones conviene, que en todas las capitulaciones, que se hicieren para nuevos descubrimientos, se excuse esta palabra *conquista*, y en su lugar se use de las de *pacificaciòn y poblaciòn*, pues habièndose de hacer con toda paz, y caridad, es nuestra voluntad, que aun este nombre, interpretado contra nues-

tra intenciòn, no ocasione ni dè color à lo capitulado, para que se pueda hacer fuerza, ni agravio à los Indios.

Ley X.

Don Felipe II, Ordenanza 20 de poblaciones.

Que los descubridores no se embaracen en guerras ni bandos entre los Indios, ni los hagan daño, ni tomen cosa alguna.

Los descubridores por mar, ò tierra, no se embaracen en guerra ninguna, entre unos y otros Indios, ni los ayuden ni revuelvan en cuestiones por ninguna causa, ni razòn que sea: no les hagan mal, ni daño, ni tomen sus bienes si no fueren por rescate, ò dàndoselo ellos por su libre voluntad.

Titulo IV.

De las Pacificaciones.

Ley VIII.

El Emperador Don Carlos, Ordenanza 8 de 1523.

Que no se consienta que à los Indios se les haga guerra, mal, ni daño, ni se les tome cosa alguna sin paga.

Ordenamos y mandamos à los Gobernadores, Cabos, y nuevos descubridores, que no consientan, ni permitan hacer guerra à los Indios, si no fuere en los casos expresados en el tìtulo de la guerra, ni otro cualquier mal, ni daño, ni que se les tome cosa ninguna de sus bienes, hacienda, ganados, ni frutos, sin que primero se les pague, y dè satisfacciòn equivalente, procurando, que las compras, y rescates sean à su voluntad, y entera libertad, y castiguen à los que les hicieren mal tratamiento, ò daño, para que con facilidad vengan en conocimiento de nuestra Santa Fè catolica.

Titulo XII.

De la Venta, Composicion, y Repartimientio de Tierras, Solares, y Aguas.

Ley V.

El Emperador Don Carlos, en Barcelona, à 4 de Abril de 1532. Don Felipe II, Ordenanza de Audiencias de 1563, y Ordenanza 58, en Toledo, à 25 de Mayo de 1596.

Que el repartimiento de tierras se haga con parecer del Cabildo, y sean preferidos los Regidores.

Habièndose de repartir las tierras, aguas, abrevaderos y pastos entre los que fueren à poblar, los Virreyes ò Gobernadores que de Nos tuvieren facultad, hagan el repartimiento con parecer de los Cabildos de las Ciudades ò villas, teniendo consideraciòn à que los Regidores sean preferidos, si no tuvieren tierras, y solares equivalentes; y à los Indios se les dejen sus tierras, heredades y pastos, de forma que no les falte lo necesario, y tengan todo el alivio y descanso posible para el sustento de sus casas y familias.

Ley VII.

Don Felipe II, en el Pardo, à 6 de Abril de 1588.

Que las tierras se repartan sin acepciòn de personas y agravio de los Indios.

Mandamos, que los repartimientos de tierras, asì en nuevas poblaciones, como en lugares y tèrminos que ya estuvieren poblados, se hagan con [illegible]a justificaciòn, sin admitir singularidad, acepciòn de personas, ni agravio de los Indios.

Ley IX.

El mismo, en Madrid, à 11 de Junio de 1594.

Que no se den tierras en perjuicio de los Indios, y las dadas se vuelvan à sus dueños.

Mandamos que las estancias y tierras que se dieren à

los Españoles, sean sin perjuicio de los Indios, y que las dadas en su perjuicio y agravio, se vuelvan à quien de derecho pertenezcan.

Ley XIV.

Don Felipe II, en 20 de Noviembre de 1578. Y à 8 de Marzo de 1589. Y en el Pardo, à 1°. de Noviembre de 1591.

Que à los poseedores de tierras, estancias, chacras y caballerìas con legìtimos titulos, se les ampare en posesiòn, y las demàs sean restituidas al Rey.

Por haber Nos sucedido enteramente en el señorìo de las Indias, y pertenecer à nuestro Patrimonio y Corona Real los baldìos, suelos y tierras que no estuvieren concedidos por los señores Reyes nuestros predecesores, ò por Nos, ò en nuestro nombre, conviene que toda la tierra que se posee sin justos y verdaderos tìtulos, se nos restituya, segùn y como nos pertenece, para que reservando ante todas cosas lo que à Nos, ò à los Virreyes, Audiencias y Gobernadores pareciere necesario para plazas, exidos, propios, pastos y baldìos de los Lugares y Concejos que estàn poblados, asì por lo que toca al estado presente en que se hallan, como al porvenir, y al aumento que pueden tener, y repartiendo à los Indios lo que buenamente hubieren menester para labrar y hacer sus sementeras y crianzas, *confirmàndoles en lo que ahora tienen*, y dàndoles de nuevo lo necesario, toda la demàs tierra quede y estè libre y desembarazada para hacer merced, y disponer de ella à nuestra voluntad. Por todo lo cual ordenamos y mandamos à los Virreyes y Presidentes de Audiencias Pretoriales, que cuando les pareciere señalen tèrmino competente para que los poseedores exhiban ante ellos, y los ministros de sus Audiencias, que nombraren, los tìtulos de tierras, estancias, chacras y caballerìas; y amparando à los que con buenos tìtulos y recaudos ò justa prescripciòn poseyeren, se nos vuelvan y restituyan las demàs, para disponer de ellas à nuestra voluntad.

Ley XVI.

El Emperador Don Carlos y la Emperatriz Gobernadora, en Ocaña, à 27 de Febrero de 1531. Don Felipe III, en el Pardo, à 14 de Diciembre de 1615, y en Madrid, à 17 de Junio de 1617.

Que se den y vendan las tierras con las calidades de esta ley, y los interesados lleven confirmación.

Por evitar los inconvenientes, y daños, que se siguen de dar ò vender caballerìas, peonìas y otras mensuras de tierra à los Españoles en perjuicio de los Indios, precediendo informaciones sospechosas de testigos: Ordenamos y mandamos, que cuando se dieren, ò vendieren, sea con citatiòn de los Fiscales de nuestras Reales Audiencias del distrito, los cuales tengan obligaciòn de ver y reconocer con toda diligencia la calidad y deposiciones de los testigos: y los Presidentes y Audiencias, si gobernaren, las den ò vendan, con acuerdo de la Junta de Hacienda, donde ha de constar ques nos pertenecen, sacàndolas al pregòn y rematàndolos en pùblica almoneda, como la demàs hacienda nuestra, mirando siempre por el bien de los Indios; y en caso que se hayan de dar ò vender por los Virreyes, es nuestra voluntad, que no intervengan ninguno de los dichos ministros; y del despacho que se diere à los interesados, han de llevar confirmaciòn nuestra dentro del tèrmino ordinario, que se observa en las mercedes de encomiendas de Indios.

Ley XVII.

Don Felipe IV, en Zaragoza, à 30 de Junio de 1646.

Que no se admita à composiciòn de tierras que hubieren sido de los Indios, ò con tìtulo vicioso, y los Fiscales y Protectores sigan su justicia.

Para màs favorecer y ampara à los Indios, y que no reciban perjuicio: Mandamos que las composiciones de tierras no sean de las que los Españoles hubieren adquirido de Indios contra nuestras Cèdulas Reales y Ordenanzas, ò poseyeren con tìtulo vicioso, porque en estas es

79

nuestra voluntad, que los Fiscales-Protectores ò los de las Audiencias, si no hubiere Protectores-Fiscales, sigan su justicia, y el derecho que les compete por Cèdulas y Ordenanzas, para pedir nulidad contra semejantes contratos. Y encargamos à los Virreyes, Presidentes y Audiencias, que les den toda asistencia para su entero cumplimiento.

Ley XVIII.

El mismo, en Madrid, à 16 de Marzo de 1642, y en Zaragoza, à 30 de Junio de 1646.

Que à los Indios se les dejen tierras.

Ordenamos, que la venta, beneficio y composiciòn de tierras se haga con tal atenciòn, que à los Indios se les dejen con sobra todas las que les pertenecieren, asì en particular, como por comunidades, y las aguas y riegos; y las tierras en que hubieren hecho acequias, ù otro cualquier beneficio, con que por industria personal suya se hayan fertilizado, se reserven en primer lugar y por ningùn caso se les quedan vender ni enajenar; y los Jueces que fueren enviados, especifiquen los Indios que hallaren en las tierras y las que dejaren à cada uno de los tributarios, viejos, reservados, Caciques, Gobernadores, ausentes y Comunidades.

Ley XIX.

El mismo, allì, à 30 de Junio de 1646.

Que no sea admitido à composiciòn el que no hubiere poseìdo las tierras diez años, y los Indios sean preferidos.

No sea admitido à composiciòn de tierras el que no las hubiere poseìdo por diez años, aunque alegue que las està poseyendo, porque este pretexto solo no ha de ser bastante; y las Comunidades de Indios sean admitidas à composiciòn, con prelaciòn à las demàs personas particulares, hacièndoles toda conveniencia.

Libro Sexto.

Titulo Primero,

De los Indios.

Ley I.

Don Felipe II, en Madrid, à 24 de Diciembre de 1580. Don Carlos II, y la Reina Gobernadora.

Que los Indios sean favorecidos, y amparados por las Justicias Eclesiàsticas, y Seculares.

Habiendo de tratar en este libro la materia de Indios, su libertad, aumento, y alivio, como se contiene en los tìtulos de que se ha formado: Es nuestra voluntad encargar à los Virreyes, Presidentes, y Audiencias el cuidado de mirar por ellos, y dar las òrdenes convenientes para que sean amparados, favorecidos, y sobrellevados, por lo que deseamos que se remedien los daños que padecen, y vivan sin molestia, ni vejaciòn, quedando esto de una vez assentado, y teniendo muy presentes las leyes de esta Recopilaciòn, que les favorecen, amparan, y defienden de cualesquier agravios, y que las guarden y hagan guardar muy puntualmente, castigando con particular y rigurosa demostraciòn à los transgresores. Y rogamos y encargamos à los Prelados Eclesiàsticos, que por su parte lo procuren como verdaderos padres espirituales de esta nueva Cristiandad, y todos los conserven en sus privilegios y prerogativas, y tengan en su protecciòn.

Ley XV.

Don Felipe II, en Madrid, à 7 de Noviembre de 1574.

Que los Indios en Filipinas no sean llevados por fuerza de unas Islas à otras.

Mandamos que en las Islas Filipinas los Indios no sean llevados de unas à otras para entradas por fuerza, y contra su voluntad, si no fuere en caso muy necesario, pagàndoles su ocupaciòn y trabajo, y que sean bien tratados y no reciban agravio.

Ley XXIII.

Don Felipe III, Ordenanza 10 del servicio personal de 1609.

Que à los Indios se señale tiempo para sus heredades, y granjerìas, y se procura que las tengan.

Justo es que à los Indios quede tiempo para labrar sus heredades, y las de Comunidad, y que los Virreyes y Gobernadores señalen el que hubieren menester, de forma que puedan acudir à sus granjerìas, procurando las tengan, con que seràn màs aliviados, y la tierra màs abastecida. Asì lo mandamos.

Ley XXVII.

Don Felipe II, en Aranjuez, à 24 de Mayo, à y 23 de Julio de 1571. En San Lorenzo, à 6, y en Madrid, à 18 de Mayo de 1572.

Que los Indios puedan vender sus haciendas con autoridad de justicia.

Cuando los Indios vendieren sus bienes raìces y muebles, conforme à lo que se les permite, tràiganse à pregòn en almòneda pùblica, en presencia de la Justicia, los raìces por tèrmino de treinta dìas, y los muebles por nueve dìas; y lo que de otra forma se rematare sea de ningùn valor y efecto; y si pareciere al Juez, por justa causa, abreviar el tèrmino, en cuanto à los bienes muebles lo podrà hacer. Y porque los bienes que los Indios venden ordinariamente, son de poco precio, y si en todas las ventas hubiesen de preceder estas diligencias, serìa causarles tantas costas como importaria el principal: Ordenamos, que esta ley se guarde y ejecute en lo que excediere de treinta pesos de oro comùn, y no en menor cantidad, porque en este caso bastarà que el vendedor Indio parezca ante algùn Juez ordinario à pedir licencia para hacer la venta, y constàndole, por alguna averiguaciòn que es suyo lo que quiere vender, y que no le es dañoso enajenarse de ello, le de licencia, interponiendo su autoridad en la escritura, que el comprador otorgare, siendo mayor, y capaz para el efecto.

Ley XXX.

El Emperador Don Carlos y el Principe Gobernador, en Madrid, à 14 de Mayo de 1546.

Que los Encomenderos no sucedan en las tierras vacantes por muerte de los Indios.

Los Encomenderos no puedan suceder en las tierras y heredamientos que hubieren quedado vacantes por haber muerto los Indios de sus Encomiendas sin herederos, ò sucesores, y en ellas sucedan los Pueblos donde fueren vecinos hasta en la cantidad que buenamente hubieren menester para paga y alivio de los tributos, que les fueren tasados, y algunas màs, y las otras que sobraren se apliquen à nuestro Patrimonio Real.

Ley XXXII.

Don Felipe II en el Pardo, à 16 de Abril de 1580.

Que los Indios tengan libertad en sus disposiciones.

Si algunos Indios ricos, ò en alguna forma hacendados estàn enfermos y tratan de otorgar sus testamentos, sucede, que los Curas y Doctrineros, Clèrigos, y Religiosos, procuran y ordenan que les dejen, ò à la Iglesia, toda, ò la mayor parte de sus haciendas, aunque tengan herederos forzosos, exceso muy perjudicial, y contra derecho: Mandamos à los Virreyes, Presidentes y Audiencias, que provean y den las òrdenes convenientes para que los Indios no reciban agravio y tengan entera libertad en sus disposiciones sin permitir violencias. Y encargamos à los Prelados Eclesiàsticos que no lo consientan, guardando la ley 9, titulo 13, lib. 1º.

Titulo III.

De las Reducciones y Pueblos de Indios.

Ley IX.

Don Felipe II, en Toledo, à 19 de Febrero de 1560.

Que à los Indios reducidos no se quiten las tierras, que antes hubieren tenido.

Con màs voluntad y prontitud se reduciràn à poblaciones los Indios, si no se les quitan las tierras y granjerìas que tuvieren en los sitios que dejaren: Mandamos que en esto no se haga novedad, y se les conserven como las hubieren tenido antes, para que los cultiven, y traten de su aprovechamiento.

Ley XXVI.

El Emperador Don Carlos, en Toledo, à 4 de Diciembre de 1528.

Que los caminantes no tomen à los Indios ninguna cosa por fuerza.

Ordenamos que en los Pueblo de Indios, Reducciones y estancias, no tomen los caminantes à los Indios contra su voluntad bastimentos, ni otras cosas, y si algo les vendieren, sea pagando el justo valor, y lo que de otra forma tomaren, haràn las Justicias satisfacer à los Indios, con el doblo, y mas el quatro tanto en pena, mitad para nuestra Càmara, y la otra dividida entre el Juez, y Acusador.

SIETE PARTIDAS.

Partida 2, Title 17.

Ley I.

Como deue el Rey ser guardado en sus cosas, quier sean muebles, o rayzes: por que las llaman assi.

Complidamente non puede ser guardado el Rey, si todas sus cosas non fuesen guardadas, por honra del. Onde, sin todas aquellas que auemos dicho, avn y ha otras, que queremos agora dezir, en que le deue el Pueblo guardar. E estas son aquellas, que son llamadas mueblos, e rayzes. E las muebles se entienden por aquellas, que biuen, e se maguer non son biuas, e se non pueden

por si mouer, pero mueuenlas. E las rayzes son las heredades, e las labores, que se non queden mouer en ninguna destas maneras, que dichas auemos. E destas heredades que son rayzes, las vnas son rayzes quitamente del Rey, assi como cilleros, o bodegas, o otras tierras de labores, de qual manera quier que sean, que ouiesse heredado, o comprado o ganado apartadamente para si. E otras y ha que pertenescan al Reyno, assi como Villas, e Castillos, o los otros honores, que por tierra los Reyes dan a los Ricos omes. Onde en todas estas cosas deue el Pueblo guardar al Rey, de manera que ninguno non sea osado de tomar por fuerca, nin de furtar, nin de encobrir ninguna dellas. Ca si en todo ome es deshonrra furtarle lo suyo, o forcargelo; quanto mas quien lo faze a su Rey, que es su senor. E demas es cosa muy desaguisada, en fazer los del Reyno al Rey, aquello de que ellos quieren ser guardados por el. E avn sin todo esto, el dano que le fiziessen, non seria solamente suyo, mas de todos aquellos a que el Rey es tenudo de frazer bien. Ca pues el ha mucho de complir e de dar en muchas maneras, menester ha otros, que aya de muchas partes de que lo pueda fazer, porque lo pueda fazer; e que le ayuden los omes a el, e non le estoruen. Onde por todas estas razones, qualquier que a sabiendas tomasse por fuerca, o furtasse las cosas muebles del Rey, segund Fuero antiguo de Espana, faria aleue conoscida: e si fuesse ome honrrado, e le tomassen en el fecho deue morir porende; e si non, ha de pechar diez tanto, como aquello que tomó e si non ouiere de que lo pechar, deue ser echado del Reyno por toda su vida. E si fuere de los otros, deue ser en prision del Rey, e seruirle por ello tanto tiempo, fasta que sea entregado de aquello que le tomo. Pero como quier que diximos, que faria aleue el que furtasse, o robasse el auer del Rey, tanto podria ser el furto, o el robo, en en tal manera, e en tal sazon fecho, que se tornaria en traycion conoscida. E porende, el que lo fiziesse deue auer pena por el aluedrio del Rey, segund qual ome fuere, e el robo, o el furto que fiziere, e la manera, e la sazon en que lo

ouiere fecho. E esto que diximos, se entiende del mueble. Mas si fuere rayz lo que encobriesse, o enajenasse alguno, tomandolo para si, o para otri sin mandado del Rey, o consentiesse que lo tomasse alguno, podiendolo vedar; si fuesse el que lo fiziesse de los omes mas honrados, deue perder la honor que touiere del Rey; e demas, hanle de tomar de la su heredad, tanto como aquello que encubrio, o enajeno, o el consintio a otri, que lo tomasse, e si non ouiere de que lo pechar, deuenlo echar del Reyno, por cuanto el Rey touiesse por bien. E si fuere otro ome, e ouiere de que lo pechar, hanle otor tanto de tomar de lo suyo, e deue ser metido en prision fasta tiempo senalado, segund el Rey touiere por bien. E si non ouiere de que lo pechar, deue morir por ello. E como quier que diximos de suso, que los que encubriessen, o enajenassen alguna heredad del Rey, que deuen auer pena, assi como sobredicho es, con todo esso, non deuen entender aquellos que la touieren, que han derecho en ella, nin que les deue fincar por esta razon, nin por tiempo que la ouiessen tenido. Porque las cosas que pertenescen al Rey, o al Reyno, non se pueden enajenar por ninguna destas razones.

Partida 3, Title 29.

Ley VII.

Como las placas, nin los caminos, nin las defesas, nin los exidos, nin los otros lugares semejantes, que son del comun del Pueblo, non se pierden por tiempo, e de las otras cosas.

Plaza, nin calle, nin camino, nin defesa, nin exido, nin otro logar qualquier semejante destos, que sea en vso comunalmente del Pueblo de alguna Cibdad, o Villa, o Castillo, o de otro Lugar, non lo puede ningund one ganar por tiempo. Mas las otras cosas que sean de otra natura, assi como sieruos, o ganados, o pegujar, o otras cosas qualesquier semejantes destas, maguer sean comunalmente del Concejo de alguna Cibdad, o Villa, bien se podria ganar por tiempo de quarenta anos. E esto es,

porque maguer que sean de todos comunalmente, no vsan comunalmente dellas todos, assi como de las otras cosas sobredichas. Empero si la Cibdad, o Villa, o otro Lugar, que pidiesse despues deste tiempo fasta quatro anos al Rey, o al Adelantado, o al Judgador del logar, que aquel tiempo passado non le empeciesse, e que le otorgasse, que la cosa non se perdiesse por el, deuegelo otorgar; e estonce non le empescera ninguna cosa el tiempo de los quarenta anos. Mas si los quatro anos passasen de mas de los quarenta, que lo non pidiessen assi, dende adelante non lo podrian pedir, e el que la cosa tuuiesse, ganarla y a por tiempo de los quarenta anos.

Ley XVIII.

Por cuanto tiempo se pueden ganar las cosas que son rayzes o incorporales.

Las cosas muebles de como se ganan por tiempo auemos mostrado fasta aqui. E agora queremos mostrar, e fablar de las otras cosas que son rayzes, o incorporales, como, e en que manera se pueden ganar por tiempo. E porende dezimos, que si algun ome rescibe de otro alguna cosa en buena fe, de aquellas que se non pueden mouer assi como por comprar, o por donadio, o por cambio, o por manda, o por alguna otra razon derecha; que si furer tenedor della diez anos, seyendo en la tierra el senor della, o veynte, seyendo en otra parte, que la puede ganar por este tiempo; maguer aquel de quien la ouiesse recebido, non fuesse verdadero senor: e dende adelante non es tenudo de responder por ella á ningun ome; maguer dixesse, que queria prouar, que el fuera verdadero senor della, e que non era sabidor que otro la ganasse por tiempo. E esto que dezimos en esta ley, la recibe, han buena fe, cuydando que lo pueden fazer; e aquel a quien passo, es tenedor della en paz, de manera que non gela demandan en todo aquel tiempo que el la puede ganar.

Ley XXI.

Como por tiempo de treynta anos puede ome ganar qual cosa quier que tenga, quier aya buena fe, quier non.

Treynta anos continuadamente, o dende arriba, seyendo algun ome tenedor de alguna cosa, por qual manera quier que ouiesse la tenencia, que non le mouiessen pleyto sobre ella en todo este tiempo, ganarla y a, maguer fuesse la cosa furtada, o forcada, o robada; e maguer que el senor della gela quisiesse demandar, dende adelante non seria tenudo de responderle sobre ella, amparandose por este tiempo. Pero si acaesciesse, que el fuesse desapoderado de la tenencia, perdiendola, o en otra manera, non le finca derecho para poderla demandar en juyzio a aquel a quien la fallasse; fueras ende, si aquel que la touiesse, la ouiesse furtada, o forcada, o robada a el mismo; o la ouiesse recebido del en manera de emprestamo, o de loguero. Ca estonce bien la podria demandar, e cobrar. Esso mismo dezimos que seria, si le ouiesse apoderado della algun Judgador, por mengua de respuesta de aquel que la auia ganada por este tiempo. Ca estonce, si viniesse fasta vn ano, e quisiesse responder a la demanda que auian mouido contra el, e pagar las costas, puedelo cobrar. Otrosi dezimos, que quando alguno fuere tenedor a buena fe de alguna cosa que sea rayz, por treynta anos, o mas, cuydando que era suya, o que fuera de su padre, o que la ouiera por otra razon derecha que la puede ganar por este tiempo, e ampararse por el contra todos quantos ge la quisieren demandar; e si acaeciesse, que perdiesse la tenencia della, puedela demandar a quien quier que la falle; fueras ende, si la fallasse el verdadero dueno della. Ca estonce, si el senor al cobrasse sin fuerca, e sin engane, e pudiesse prouar el senorio que auia sobre aquella cosa, non seria tenudo de gala dar.

Partida 6, Title 19.

Ley X.

Como las Eglesias, e los Reyes, e los Concejos, pueden demandar restitucion, por aquellas mismas razones que los menores.

Porque los bienes de las Eglesias, e de los Reyes, e de los Concejos se pierden, o se menoscaban, por culpa de los que los han a procurar, o por engano de los otros. E porende fue establescido antiguamente, que tales bienes ayan aquel preuillejo, e aquella mejoria que han las cosas de los menores de veynte e cinco anos. Onde los que han en poder, e en guarda, las cosas sobredichas, pueden demandar restitucion sobre cada vna dellas, quando se menoscabassen por tiempo, o por engano, o por negligencia de otri. E esto pueden demandar desde el dia que recibieron el engano, o el menoscabo fuesse tan grande, que montasse de mas de la meytad del precio, que valia alguna de las cosas sobredichas que fuesse enagenada, estonce bien puede demandar emienda, e restitucion, fasta treynta anos, desde el dia que fue fecho el enagenamiento de la cosa.

NOVISIMA RECOPILACION.

Libro XI.

Titulo VIII.

Ley IV.

Tiempo necesario para prescribir el Senorio de los pueblos, y su Jurisdiccion civil y criminal, à excepcion de la Suprema, y de los pechos y tributos pertenecientes al Rey.

Porque algunos en nuestros reynos tienen y poseen algunas ciudades, villas y lugares, y Jurisdicciones civiles y criminales, sin tener para ello título nuestro, ni de los Reyes nuestros antecesores, y se ha dudado, si lo suso dicho se puede adquirir contra Nos y nuestra

Corona por algun tiempo; ordenamos y mandamos, que la posesion inmemorial, probándose segun y como y con las calidades que la ley de Toro requiere, que es la ley 1, tit. 17, lib. 10, baste para adquirir contra Nos y nuestros sucesores qualesquier ciudades, villas y lugares, y Jurisdicciones civiles y criminales, y qualquiera cosa y parte dello, con las cosas al Senorio y Jurisdiccion anexas y pertenecientes; con tanto que el dicho tiempo de la dicha prescripcion no sea interrumpido, ni destajado por Nos, ó por nuestro mandado, ó otros en nuestro nombre, natural ó civilmente; pero la Jurisdiccion civil ó criminal Suprema, que los Reyes han por mayoría y poderío Real, que es la de facer y cumplir donde los otros Senores y Jueces la menguaren, declaramos, que esta no se pueda ganar ni prescribir por el dicho tiempo, ni por otro alguno: y asi mismo lo que las leyes dicen, que las cosas del Reyno no se puedan ganar por tiempo, se entienda de los pechos y tributos á Nos debidos.

JUSTINIAN CODE.

Lib. VII. Title 37, 1.

Imp. Constantinus A. ad Orphitum.

Notum est, a fisco quæstionem post quadriennium (continuum) super bonis vacantibus inchoandam non esse. Additum est, et eos qui nostra largitate nituntur, nulla inquietudine lacessendos: nec his a fisco nostro controversiam commovendam, qui quoquo modo aut titulo easdem res possederint.

Lib. VII. Tit. 38, 2.

Impp. Valentinianus, Theodosus et Arcadius, Aaa. Dextro comiti rerum privatarum.

Universas terras quæ a colonis sive emphyteuticariis dominici juris, rei publicæ, vel juris sacrorum templorum in qualibet provincia venditæ, vel ullo alio pacto alienatæ sunt ab iis qui perperam atque contra leges eas detinent, nulla longi tempus præscriptione officiente,

jubemus restitui; ita ut nec pretium quidem iniquis comparatoribus reposcere liceat.

Datum 3 nov. jul. Constantinop. Valentiniano A. IV et Eutroprio coss. 387.

Lib. VII. Tit. 39, 4.

Imp. Anastasius A. Matroniano, præfecto prætorio.

* * * Nullumque jus privatum vel publicum in quacunque causa vel quacunque persona, quod prædictorum quadraginta annorum extinctum est jugi silentio, moveatur. Sed quicunque super quolibet jure, quod per memoratum tempus inconcussum est, et sine ulla re ipso illata judiciaria contentione possedit * * *.

Lib. VII. Tit. 39, 6.

* * * Ideoque jubemus eos qui rem aliquam per continuum annorum quadraginta curriculum sine quadam legitime interpellatione possederint, de possessione quidem ni sin dominio nequaquam removeri.

FILED
JAN 13 19
JAMES H. McKEN

No. 72.

Supreme Court of the United States.

October Term, 1907.

[redacted]

MATEO CARIÑO,
Plaintiff in Error,

vs.

THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS.

In Error to the Supreme Court of the Philippine Islands.

REPLY BRIEF.

PAUL FULLER,
FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
Counsel for Plaintiff in Error,
2 Rector Street, N. Y.

Supreme Court of the United States,

October Term, 1908.

No. 72.

MATEO CARIÑO, Plaintiff in Error, vs. THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS.	In Error to the Supreme Court of the Philippine Islands.

Brief in Reply for the Plaintiff-in-Error.

The Brief of the Honorable Solicitor General presents three contentions:

1. That this case is not reviewable in this Court, on writ of error.

II. That no reservation of land was ever specifically set aside by the Spanish Government for the Igorrotes, from which he concludes that all the lands occupied and claimed by the Igorrotes, individually or as a tribe, were crown lands; that prescription did not run against the Spanish crown; and that ownership of such lands could only be obtained by administrative action.

III. That the American Legislation since the cession has not altered Cariño's status, nor added any virtue to his wrongful possession, which the Solicitor General claims is that of a "mere trespasser."

We shall reply to these points in order.

I.

This Court has jurisdiction to review the judgment in the case at bar on writ of error.

The learned Solicitor General devotes nearly one-quarter of his brief (18 pages) to an argument that review in this cause should have been sought in this Court by appeal instead of by writ of error. This argument proceeds, however, upon a mistaken assumption as to the nature of the proceeding.

Judgments of the Supreme Court of the Philippine Islands are reviewable in this Court "on appeal or writ of error" by the party aggrieved, in the same manner, under the same regulations and by the same procedure, *as far as applicable,* as the final judgments and decrees of the Circuit Courts of the United States (32 U. S. Stat., 695, quoted on p. 30 of Government Brief). The only difficulty in applying the test provided by this Statute lies in the fact that the jurisdiction of the United States Circuit Court does not cover the whole field of general jurisprudence. They are courts of limited and purely Federal jurisdiction, and there are many important classes of controversies which cannot come before them, such as matters of marriage and divorce, adoption and filiation, probate and administration, and numerous others, all of which properly come within the jurisdiction of the Philippine Courts, and may be reviewed by this Court if a jurisdictional question or amount is involved. There may, therefore, be many cases in which this Court is called upon to review a Philippine judgment, which cannot be immediately classified and assigned to some definite category already established and recognized in the Circuit Courts.

A similar situation has existed for many years in regard to the review by this court of judgments of the highest court of the District of Columbia, where the procedure is also assimilated by statute to the review of adjudica-

tions of the Circuit Courts. (See Sec. 705 U. S. Rev. Stat., 27 U. S. Stat., p. 434, 31 U. S. Stat., 1189, 1227). The courts of the District of Columbia being of plenary, as distinguished from merely *federal* jurisdiction, cases therefrom have come up for review in this Court which did not fall within any distinct category cognizable in the Circuit Courts, and this Court has repeatedly held that unless a given controversy was technically and specifically a *suit in equity,* it was reviewable on writ of error.

This question was fully considered in *Ormsby* v. *Webb,* 134 U. S. 47, which was a writ of error to review a judgment of the General Term of the Supreme Court of the District of Columbia, affirming an order of the Special Term admitting a will to probate. It was objected that the case was "one of equity jurisdiction, and could be brought here only by appeal" (p. 48). This Court, by Mr. Justice Harlan, held:

"A proceeding in this District for the probate of a will, although of a peculiar character, is nevertheless a case in which there may be adversary parties, and in which there may be a final judgment affecting rights of property. It comes within the very terms of the Act of Congress defining the cases in the Supreme Court of this District, the final judgments in which may be re-examined here. *If it be not a case in equity, it is to be brought to this Court on writ of error, although the proceeding may not be technically one at law as distinguished from equity.*"

In *Ormsby* vs. *Webb,* there had been a jury trial of the issues, but the same rule was applied in *Campbell* vs. *Porter,* 162 U. S., 478, a probate case which had been tried by the Court.

In *Metropolitan Railroad Co.* v. *District of Columbia,* 195 U. S., 322, the question arose on the review of an adjudication in a condemnation proceeding, and this Court held, by Mr. Justice White, "that a proceeding involving the exercise of the power of eminent domain is essentially

but the assertion of *right legal in its nature,*" and that writ of error was the proper method of review.

Proceedings by mandamus and prohibition have also been held to be at law, and hence reviewable by writ of error.

See

Steinmetz v. *Allen,* 192 U. S., 543.
Lowry v. *Allen,* 203 U. S., 476.
Smith v. *Whitney,* 116 U. S,. 167.

The proceeding for land registration under Act No. 496 of the Philippine Commission is something of a novelty in Federal jurisprudence, but it is manifestly a proceeding at law, and not a suit in equity.

It is expressly stated in the Act: "The proceedings upon such application shall be proceedings *in rem* against the land and the buildings and improvements thereon" (Sec. 2).

Thus it is analogous to an action in replevin or a proceeding for condemnation, both of which are *in rem,* and are at law. It is elementary that equity acts not *in rem,* but *in personam,* and that "a naked question of title" is not cognizable in a court of equity at all.

See *Massie* v. *Watts,* 6 Cranch, 148, at 158 and 159, Marshall, *C. J.*
Boston, &c., Mining Co. v. *Montana Ore Co.,* 188 U. S., 632, at page 641.

Applications for registration under the Act can only be made by persons claiming to own or to have the power of disposing of "the *legal estate* in fee simple" (Sec. 19). The proceeding does not lie to declare or enforce equitable rights or titles. Its object is merely to declare and record the *legal* title in such manner as to make it conclusive against the world at large. The decree of registration "binds the *land,*" and is by force of the statute "conclusive upon and against all persons" (Sec. 38), but it is not a personal decree against any one.

The adjudications of this Court of Land Registration are more than once styled "judgments" as well as "decrees" in the act itself (Secs. 17, 36), and there is in any event no cabalistic power in the word "decree," whereby its use can convert a proceeding at law into a suit in equity. An adjudication admitting a will to probate is almost invariably styled a decree, but, as we have shown, a probate case is at law.

The fact that the review of determinations of the lower court by the Court of First Instance is upon appeal is immaterial, for that is the prescribed method of review in special proceedings in the Philippine Islands.

> Philippine Code of Civil Procedure, Act 190, Phil. Com., §498.

By the Land Registration Act (Sec. 2), the proceedings thereunder are assimilated to "special proceedings," and they also conform to the definition thereof in Sec. 1 of the Code of Civil Procedure, viz.: "An 'action' means an ordinary suit in a Court of justice, by which *one party prosecutes another* for the enforcement or protection of a right, or prevention or redress of a wrong; *every other remedy furnished by law is a special proceeding.*"

The method of review in the courts below, does not alter the essential nature of the case for purposes of review in this Court.

Moreover, the review of the Court of First Instance by the Philippine Supreme Court was by "bill of exceptions," a typically *legal* method (Rec., p. 178).

The learned Solicitor General seeks to assimilate these proceedings before the Land Court to "Bills of Peace," or "Bills *Quia Timet.*" But these proceed against the *persons* from whom the complainant anticipates disturbance and seek to restrain them from interference with an already established *legal* title. Proceedings under the Land Registration Act merely establish the *legal*

title, and the Act itself prescribes the legal consequences of such registration. Such bills in equity as those mentioned can only be maintained to remove an existing cloud, or restrain some potential disturbance; they necessarily imply the existence of a defendant with some actual adverse claim. The proceeding for registration, on the other hand, aplies primarily to a good and unquestioned title; it is directed against the land itself, and not against any individuals; and its result, by force of law, binds the whole world. It is distinctly and manifestly a proceeding at law to establish a naked legal right, and has no connection with equity procedure, or equity jurisprudence.

The objection to the method of review is, therefore, not well taken.

II.

Cariño's rights existed as property rights protected by the Treaty independent of registration under Spanish administrative regulations.

The learned Solicitor General asserts that the Igorrotes "were never brought under the civil or military government of the Spanish Crown." If from this it be argued that the Igorrotes were not under the protection of the guarantees of property afforded by the Spanish law, the answer is that neither were they then subject to Spanish administrative regulations and that their property rights depend solely on their own native laws. It also follows from this premise that their lands could not have been Spanish Crown lands.

Even accepting as a fact (for the sake of argument) that the Spanish Government never made any specific reservation of land for the Igorrote tribe, this is ex-

plained by the statement in the Hon. Solicitor General's brief; "nor did the Spanish Government ever attempt to interfere in their internal tribal affairs."

In other words, the Spanish Government left their "tribal affairs",—their lands. tenures and customs,—as they found them. Hence, there was no occasion to make any "reservation of land" for the Igorrotes. That the Igorotes were the owners and possessors of land, both as a tribe and individually, is abundantly established, and that the right of the aborigines in that regard were recognized and safeguarded by the Royal Decrees and the Spanish law is demonstrated by the extracts to be found in the original brief.

It is claimed that there is no analogy between the rights of Indians in the United States and the rights claimed for the Igorrotes, as it is said that our Courts recognized no Indian rights of property except those conferred by treaty or by concessions or reservations made by the Government.

This is an error which an examination of the Indian Treaties, or the decisions of this Court will dissipate. For instance: In *Doe* v. *Wilson*, 23 Howard, at p. 461, the Court says:

> "By the Treaty of Oct. 27, 1832, made by the "United States, through Commissioners, with the "Pottawatomie tribe of Indians of the State of In-"diana and Michigan Territory, *said Nation ceded "to the United States their title and interest in and "to their lands* in the States of Indiana and Illinois, "and Michigan Territory, south of Grand River.
>
> "*Many reservations were made* in favor of Indian "villages jointly, *and to individual Pottawatomies* " * * * ; *to these, the Indian title remained as "it stood before the treaty was made.*"

And the Court upheld a conveyance in fee simple made by one of the individual reservees.

"Although the Government alone can purchase

"lands from Indian Nations, it does not follow that "when the rights of the Nation are extinguished an "individual of the nation who takes as private "owner cannot sell his interest" (p. 463).

See also *U. S.* v. *Paine Lumber Co.*, 206 U. S., 467.

But granting again, for the sake of the argument, that the analogy between the status of the North American Indian, under our domination, and that of the Igorrote under Spanish dominion, is not absolute, it is the position of the latter which must determine the controversy.

The difference between the two as indicated by the decision is that the Indians in America, as a rule, held their lands as Tribes, and individual titles were only known and required by the initiative of the United States Government as was done in the case of *Doe* v. *Wilson, supra;* while the Igorrotes recognized not only tribal tenures, but individual ownership with the incidents of inheritance and the power of alienation. This is a distinction which enforces the claims of Cariño, and explains why Spain never assumed the position taken by the United States. The tribal ownership in the course of the subversive changes wrought by the advance of civilization militated against the individual Indian to such an extent that as guardian and protector of the Indian, the U. S. Government had to intervene in his behalf (Stephens *v.* Cherokee Nation, 174 U. S., 445). In the Philippines, where among the Igorrotes, at all events, individual ownership was freely recognized, no such parental guardianship over Indian lands was called for, and none was ever exercised.

The difference between the tenure of lands by the aboriginals in America, and those in the Philippines is further made clear by the Law of March, 1642, cited at p. 35, of our original Brief, which reads in part:

"We order that the sale of lands be made with such care that there be amply left to the Indians

those which belonged to them, *whether individually*, or in communities, &c."

There is no finding and no evidence that the lands owned by Cariño and his ancestors for several generations were ever Crown Lands, or claimed as such by the Spanish Government. The Regulations of 1880, as to composition of Titles to public lands, cited by the Solicitor General, define what will be regarded as Royal Land as:

"All lands whose lawful ownership is not vested "in some private person."

At that time Cariño's father was the owner of the lands and in lawful possession thereof, by inheritance from his father, whose actual ownership has been traced to a period antedating the American occupation by fifty years. The appearance of fences estimated by an experienced surveyor to be not less than 100 years old indicates a well defined private ownership as far back again, and there is no evidence or finding of any other *status* at any time.

All the provisions of law cited by the Solicitor General, either Spanish or American, rest upon an established or conceded premiss that the lands under consideration are Royal or Public lands, and are applicable only to lands which are concededly or unquestionably of that character. This basis for their application is wanting in the present case.

As to prescription against the State under the Spanish law ripening an adverse possession of Royal lands into an impregnable title, the original brief has fully anticipated any objection urged, and it would be repetition to refer in detail to the various laws, from centuries back down to the Civil Code of 1889, which recognize the effect of such prescription.

It is pertinent to recall here, that prescription need not be invoked in the present case, until the defendant

in error has established that the lands in question were Royal lands, and has defeated the claim of title by individual ownership in the Cariño family for generations back.

The Court of Land Registration found at the threshold a possession so long and so unquestioned that it had ripened into ownership even against the State, owing to the effect of prescription under Spanish law, and did not find occasion to pass more specifically as an independent question of law, upon the claim of title by devise or inheritance which Cariño also asserted,—but this holding that in any event, and even without the title by devise, Cariño was entitled to registration of his title, does not hinder or defeat the title by devise or inheritance, which Cariño has continuously asserted and, we submit, amply established, as shown in the Findings of the Court below.

The Solicitor General insists that under the Regulations of April 17, 1894, all claims to public lands not availed of under the Decree of June 25, 1880, should be, thereafter, barred, and that in consequence whatever rights Cariño had, were lost by his not having applied for "adjustment or composition" of his claim under the Decree of 1880, prior to the promulgation of the Regulations of April 17, 1894.

The answer to this contention is twofold:

I.—The Decree of 1880 applied only to claims upon Royal lands.

II.—Even as to claimants of Royal lands it did not apply to those whose adverse possession had ripened into full ownership.

I.—That it related only to public lands is conceded by the Solicitor General and the language clearly confines it to such lands.

There is no finding, as there is no evidence, that the lands of Cariño were ever public lands.

II.—It did not apply to occupants of public land whose adverse possession had ripened into full ownership.

We quote from the Ministerial Preface to the Decree explaining its purpose:

PREFACE.

"The immense and immediate profit which must "result to all classes of interests, public as well as "private, *from the substitution of full ownership,* "with all the privileges which accompany this real "right, *for the mere possession of the lands,* have "long counselled the adoption of the provision con- "tained in the following regulations."

* * * *

ART. 4.—For all legal effects those will be considered *proprietors* of the Royal lands herein treated who may prove that they have possessed the lands without interruption during the period of ten years by virtue of a good title or in good faith.

ART. 5.—In like manner, those who without such title deeds may prove that they have possessed their said lands without interruption for a period of twenty years, if in a state of cultivation, or for a period of thirty years, if uncultivated, *shall be regarded as proprietors thereof* * * *.

ART. 6.—Interested parties *not included within the two preceding articles,* may legalize their possession, and thereby *acquire the full ownership of the said lands by means of adjustment proceedings,* etc., etc.

It is clear from these provisions that persons who without title deeds had remained in possession without interruption for thirty years, even if the lands were uncultivated, were regarded as "proprietors." In the words of the Colonial Minister who reported the law, for

the mere possession of the land" there had been substituted " full ownership." Such proprietor required no "adjustment or composition"; only those "not included within the two preceding articles," says *Art. 6*, were empowered to "*legalize that possession, and thereby acquire the full ownership of such lands by means of adjustment proceedings.*"

Parties included within Articles 4 and 5 were proprietors of the lands they had held for ten, twenty, or thirty years, and clearly recognized as such.

Cariño was not, therefore, called upon to seek adjustment or composition under the Decree of June, 1880, nor was he therefore barred by the Regulations of 1894.

It appears that he made some application under the Regulations of 1894, but exactly what it was or whether it referred to the lands included in the present controversy did not appear, and the Court below made no finding that such proceedings did relate to such lands.

Moreover, even if Cariño had made an ill-advised effort for relief, such an attempt to secure peace could not be interpreted as a surrender of the right to property which the findings show him to have substantiated in the present proceedings.

The Solicitor General claims that "ancient possession" could not be ripened into a fee simple title except by proof *before an administrative officer*, his affirmative action on the claim, *and a compliance with the regulations prescribed.* To this claim that the law left it to "an administrative officer" to determine the validity of land titles, we oppose the formal language of the law, which declares that the occupants of lands for the periods mentioned " shall be regarded as proprietors" * * "will be considered proprietors for all effects." The "legal effect" is thus determined by the law, and is not left to "an administrative officer." The term, "may prove that they have possessed the land without interruption' can mean no more than the privilege of establishing their claims judicially by proof whenever ques-

tioned or whenever it may become requisite to do so (as in the present case). The ordinary courts will not be divested of general jurisdiction nor will administrative officers be invested with judicial jurisdiction by mere inference; and to support the Solicitor General's claims there is nothing but an inference and that is rebutted by the context.

The decree of 1880, Art. 6, Subd. 5, provides that "those who were in possession of lands belonging to the State and may acquire *the ownership thereof*, by paying to the public treasury the value of lands at the time such possessors began their *unauthorized enjoyment* of the same. Articles 4 and 5 declare the uninterrupted possessors to be "the proprietors * * for all legal effects." This is clearly the ownership, the "full ownership," in the language of the Colonial Minister, which the law has thus "substituted" for "the mere possession." Proprietors having the full ownership of the land, can have no need to apply, under Article 6, as persons "in possession of lands belonging to the State" in order to "acquire ownership thereof."

There is nothing which such legally recognized proprietors are called upon to do or can do, to quote the language of the Solicitor General, in "compliance with "the regulations prescribed."

The regulations are for those whose "unauthorized enjoyment" has not ripened into "ownership" and who, therefore, are authorized to "acquire the ownership," by compliances with the regulations. There is, therefore, no requirement for the *owners* of property to make any application to any administrative office, and no occasion for his "affirmative action."

If the forfeiture provision in the Royal Decrees of 1880 and 1894 was intended to apply to such cases as Cariño's, then it was contrary to the fundamental law of Spain, as shown in our main brief. No attempt was ever made by the Spanish Government to enforce it, and it is a somewhat extraordinary claim that the United States Govern-

ment should now seek to apply it, regardless of the constitutional guarantees of both countries and the added protection of the Treaty.

Against the mass of Spanish legislation favoring the Indians and protecting their rights and their property against usurpation, the Solicitor General makes ironical reference to *Law 1, Title 12, Book 4,* of the Laws of the Indies as providing that subjects of Spain to whom allotments of land were made, were also allowed "the "compulsory service of the Indians" as a corollary incident to the grant.

Perhaps the Solicitor General did not observe that in *Law 15, Title 1, Book 6,* of the Laws of the Indies (pp. 20-21, Brief of Plff. in Error), it is commanded that the Indians "*be paid for their work and service, and be well "treated, and receive no injury.*"

We do not find in this compulsory impressment of service to the benefit of settlers in a distant and uncivilized country, accompanied with a requirement for compensation and good treatment, and a forbiddance of any injury, any ground for doubting or disturbing the very frequent and very explicit recognition of the Indians' right to property, to be found in the numerous laws cited in the original brief.

III.

Cariño's title had not been adversely affected by legislation since the cession.

The only legislation germane to the issue here, is Act 496 of the Philippine Commission, creating a Court of Land Registration, with a view to encouraging land owners to make a public record of their holdings, and thus create a modern and available system of ready examin-

ation and identification of land titles. It was this invitation and encouragement to which Cariño responded, establishing to the satisfaction of the Court of Land Registration his title to his land and obtaining the registration provided for by the law. It is this compliance with the law to which defendants in error take exception, and invoke another law of the Philippine Commission, No. 926, relating to *Public Lands*, the terms of which were not at the time applicable to the province of Benguet, to show that as an occupant of Public Lands, Cariño is not entitled to the relief provided by that law.

To this there is the double answer:

A. The lands claimed by Cariño never were public lands.

B. If they were public lands at any time, Cariño's adverse possession ripened into ownership and against Spain, and they ceased to be public lands long prior to the cession to the United States.

The learned Solicitor General lays much stress on the development of Benguet since the American occupation into an important summer resort—a "Philippine Sunca." But the desirability of a piece of private property has not been deemed a sufficient reason for evicting the owner since the somewhat famous case of Ahab, Rex *v.* Naboth, reported in 1st Kings, Chap. 21.

Respectfully submitted this 12th day of January, 1909.

PAUL FULLER,
FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
Counsel for Plaintiff-in-Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

MATEO CARIÑO, PLAINTIFF IN ERROR,
v.
THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS. } No. 72.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE UNITED STATES AND THE INSULAR GOVERNMENT.

STATEMENT.

Mateo Cariño, the plaintiff in error, is an inhabitant of the province of Benguet, in the Philippine Islands. He is a member of the tribe of Igorrotes—savages, who were never brought under the civil or military government of the Spanish Crown during its occupancy of the islands. The Igorrotes retained their native laws and customs; administered justice among their people after their own fashion; rights of property, real and personal, passed among them by possession, through gift or barter, or by oral devise; and, as the people have never had a written language, there has never been any registry of ownership.

67172—09——1

The land, the right to the ownership of which is here in question, is situated in the township of Baguio, province of Benguet, island of Luzon. From the elevation of the region (5,000 to 7,000 feet), and the particularly favorable location of Baguio, early in the American occupation it was resorted to as a sanitorium for convalescents, and has since been so improved that it has become the *Simla* of the Philippines. It may not be improper to go outside of the record to state that it is the seat of the insular government during the hot months, of extensive hospitals and hotels, with numerous private houses, has a large garrison of American soldiers, is improved by water, lighting, and sewerage systems, and is connected by the famous Benguet road with the railroad system at Dagupan. These facts have raised lands in the immediate vicinity of the township and municipality of Baguio from the value of remote mountain grazing fields to that of town lots in an exclusive and limited summer resort.

The land in question has an area of about 150 hectares (375 acres), and the transcript shows (p. 153) that it has been in the possession of the immediate ancestors of Mateo Cariño for more than fifty years prior to the date of the ratification of the treaty of Paris; that it passed into the possession of plaintiff in error, by oral devise, on the death of his father in 1883 (p. 152); that neither plaintiff in error nor his father had ever lived on the land, but had always used it for grazing purposes, with some slight cultiva-

tion, and that for at least thirty years prior to 1899 it had been more or less completely inclosed (pp. 152, 153).

In the year 1894 a Spanish royal decree provided for the reversion to the state of all agricultural lands in the Philippine Islands title to which had not been registered by claimants thereto in accordance with a prior decree of 1880 (p. 183). Mateo Cariño made no effort to register his claim to ownership to these lands with the proper administrative officers until 1894, in which year he made application for registry, but failed to pay the necessary fee; subsequently, in 1897, he renewed his application as to some lands in the province of Benguet, but as he was the owner of various other tracts in the same province, and the lands are not described in the application, it is uncertain whether these lands were covered or not (pp. 154–156).

No administrative action was taken by the provincial or other officials of the Spanish insular government.

On February 21, 1901, Mateo Cariño filed in the Court of First Instance for the province of Benguet an information asking registry of these lands in his name (p. 154).

Prior to this date he had had interviews with one Clarke, of Manila, and negotiations as to the sale of the land (pp. 159, 160), and on October 3, 1901, Cariño executed a contract of sale of the lands to said Clarke, describing himself therein as being "*in possession*"

of the same, and agreeing, for the consideration of ₱6,000,

> to sell this land to Mr. M. A. Clarke as soon as he obtains from the Government of the United States, or its representative in the Philippines, real and definite title to said land in accordance with the laws in this respect enacted by the civil commission of the United States in the Philippines (pp. 137, 138).

On October 10, 1903, the President of the United States by proclamation reserved for military purposes certain property situated in the township of Baguio, province of Benguet, and a portion of the lands here claimed was within the reservation. The Benguet-Dagupan road was also constructed through it.

The petition of Cariño for registration of the land in his name was filed on June 22, 1903, and heard by the court of land registration; and, on March 4, 1904, a decree in favor of claimant was entered by said court (p. 6, et seq.).

Appeal from said decision, on behalf of the Philippine government, was taken to the court of first instance of the province of Benguet, was tried before said court *de novo*, and upon April 4, 1905, the court disallowed the petition of the petitioner, Cariño, and entered a decree against him (p. 177).

An *appeal* from the judgment of the court of first instance was properly prosecuted to the supreme court of the Philippine Islands (pp. 177–179), and on December 6, 1906, after a full hearing, the decree of the court of first instance was affirmed, all the judges concurring in the result (pp. 179–183).

From the foregoing decree of the supreme court of the Philippine Islands this writ has been prosecuted (pp. 184–190).

The plaintiff in error makes the following assignments of error in the prosecution of this writ:

1. The court erred in holding that prescription did not run against public agricultural lands of the Kingdom of Spain in the Philippine Islands during Spanish sovereignty.

2. The court erred in holding that a grant of title of public agricultural lands in the Philippine Islands could not be presumed from immemorial use and occupation.

3. The court erred in holding as a conclusion of law from the facts of record that title to the land involved in this proceeding had not vested in the plaintiff.

4. The court erred in holding that Mateo Cariño, plaintiff herein, was not the owner in fee simple of the land involved in this proceeding, and was not entitled to its registration under the provisions of the land registration act of the Philippine Islands.

5. The court erred in affirming the decision of the trial court ordering the dismissal of plaintiff's application.

THE LAWS INVOLVED.

From the earliest occupation of the Indies by the Spanish, laws and regulations as to real property were enacted and enforced. Provision was made for the grant and occupation of public lands in the conquered territory by subjects of Spain who were

colonists, and for the protection of title in natives of said territory who were in occupation and could prove exclusive and adverse possession for the periods prescribed in such laws and regulations.

Recognizing fully the industry and erudition of counsel for plaintiff in error as shown by their collection of the Spanish texts contained in the body and appendix to their brief, it is respectfully urged on behalf of the defendant in error that, while interesting to those curious in the origin of the Spanish law, they, for the most part, have no application to the few, simple, and well-defined questions presented for the consideration and decision of this court.

At a very early date the Spanish laws provided for the assignment of public lands in the Indies to the subjects of the Crown.

Law 1, title 12, book 4 of the *Recopilacion de Leyes de las Indias*, provides:

> In order that our subjects may be encouraged to undertake the discovery and settlement of the Indies, and that they may live with the comfort and convenience which we desire, it is our will that there shall be distributed to all those who shall go out to people the new territories, houses, lots, lands, *peonias*, and *caballerias* in the towns and places which may be assigned to them by the governor of the new settlement, who, in apportioning the lands, will distinguish between gentlemen and peasants, and those of lower degree and merit, and who will add to the possessions and better the condition of the grantees, according to the

> nature of the services rendered by them, and with a view to the promotion of agriculture and stock raising. To those who shall have labored and established a home on said lands and who shall have resided in the said settlement for a period of four years we grant the right thereafter to sell and in every other manner to exercise their free will over said lands as over their own property. And we further command that, in accordance with their rank and degree, the governor, or whoever may be invested with our authority, shall allot the Indians to them in any distribution made, so that they may profit by their labor and fines in accordance with the tributes required and the law controlling such matters.

Here were grants to subjects of Spain, which four years of residence and tillage ripened into a fee simple title, and it will be observed also that culture labor, in the compulsory service of the natives, was by allotment a corollary incident to the grant. But it was necessary, in order to ripen the rights acquired by residence and tillage into a grant of a fee simple title, that administrative action, on the application of the grantee, should be taken by the public officials.

It is provided in law 8, title 12, book 4 of the *Recopilacion* as follows:

> We command that if a petition shall be presented asking the grant of a lot or tract of land in a city or town in which one of our courts may be located, the presentation shall be made to the municipal council. If the latter shall approve the petition, two deputy magistrates

> will be appointed, who will acquaint the viceroy or municipal president with the council's judgment in the matter. After consideration thereof by the viceroy or president and the deputy magistrates, all will sign the grant, in the presence of the clerk of the council, in order that the matter may be duly recorded in the council book. If the petition shall be for the grant of waters and lands for mechanical purposes, it shall be presented to the viceroy or municipal president, who will transmit it to the council. If the latter shall vote to make the grant, one of the magistrates will carry its decision to the viceroy or president, to the end that, upon consideration of the matter by him, the proper action may be taken.

And, in the course of time, it being found that tracts of the public land were occupied without proper title papers of ownership, law 14, title 12, book 4 of the Recopilacion (Philip II, November 20, 1578; March 8, 1589, and November 1, 1591), provided:

> We having acquired full sovereignty over the Indies, and all lands, territories, and possessions not heretofore ceded away by our royal predecessors, or by us, or in our name, still pertaining to the royal crown and patrimony, it is our will that all lands which are held without proper and true deeds of grant be restored to us according as they belong to us, in order that after reserving before all what to us or to our viceroys, audiencias, and governors may seem necessary for public squares, ways, pastures, and commons in those

places which are peopled, taking into consideration not only their present condition, but also their future and their probable increase, and after distributing to the natives what may be necessary for tillage and pasturage, confirming them in what they now have and giving them more if necessary, all the rest of said lands may remain free and unencumbered for us to dispose of as we may wish.

We therefore order and command that all viceroys and presidents of pretorial courts designate, at such time as shall to them seem most expedient, a suitable period within which all possessors of tracts, farms, plantations, and estates shall exhibit to them, and to the court officers appointed by them for this purpose, their title deeds thereto. And those who are in possession by virtue of proper deeds and receipts, or by virtue of just prescriptive right shall be protected, and all the rest shall be restored to us to be disposed of at our will.

From the foregoing it is clearly apparent that the Crown of Spain recognized as good titles by prescription to the public lands in the Indies, including the Philippine Islands.

But an indispensable requisite to the perfection of such titles was that evidence of grants from the Crown, or of possession and occupation for the required length of time, should be presented to administrative officers of the Crown, who, after being satisfied of the sufficiency of the evidence, should "*confirm them* [the natives] *in what they now have, and give them more if*

necessary," and deliver to such persons written evidence of title from the Crown (p. 126).

The administrative officers named in the law last quoted were ordered to designate a suitable period within which interested persons and claimants should present their proofs for examination and determination, and the law provides that as to the public lands to which no proved title had been made, and as to which the administrative officers had given no document of title, they "*may remain free and unincumbered for us* [the Crown] *to dispose of as we may wish,*" and "*shall be restored to us to be disposed of at our will.*"

In the preamble of this law it is distinctly stated that all the public lands in the Indies belong to the Crown which had not been granted by Philip II, or in his name, or by the kings who preceded him, thus precluding the idea that there were *any* lands in the Indies under Spanish domination not so granted, that did not belong to the King; it precludes also, the idea or contention that the Crown was not the owner of ungranted lands, or those to which claimants had not received title papers from the administrative officers, even although they had been in the immemorial adverse occupation of private persons. What period of prescription was fixed by the administrative officers under this law does not appear; but, later, in 1646, law 19 of the same title fixed the period at ten years.

Another step in the legislation directed to this subject was the royal cedula of October 15, 1754 (4 Leg-

islacion Ultramarina, 673, articles 3, 4, and 5), as follows:

> 3. Upon each principal subdelegate's appointment, which will be made in the manner prescribed in article 1 of this cedula, and upon his receipt of these instructions, of which every principal subdelegate already designated or who may hereafter be appointed shall be furnished a copy, said subdelegate will in his turn issue a general order to the courts in the provincial capitals and principal towns of his district, directing the publication therein, in the manner followed in connection with the promulgation of general orders of viceroys, presidents, and administrative courts in matters connected with my service, of these instructions, to the end that any and all persons who, since the year 1700 and up to the date of the promulgation and publication of said order, shall have occupied royal lands, whether or not the same shall be cultivated or tenanted, may, either in person or through their attorneys or representatives, appear and exhibit to said subdelegates the titles and patents by virtue of which said lands are occupied. Said subdelegates will designate as the period within which such documents must be presented a term sufficient in length and proportionate to the distance the interested party may have to travel for the purpose of making the presentation. Said subdelegates will at the same time warn the parties interested that in case of their failure to present their title deeds within the term designated, without a just and

valid reason therefor, they will be deprived of and evicted from their lands, and they will be granted to others.

4. If it shall appear from the titles or instruments presented, or if it shall be shown in any other legal manner, that said persons are in possession of such royal lands by virtue of a sale or adjustment consummated by duly authorized subdelegates prior to the said year 1700, although such action may not have been confirmed by my royal person, or by a viceroy or president, they shall in no wise be molested, but shall be left in the full and quiet possession of the same; nor shall they be required to pay any fee on account of these proceedings, in accordance with law 15, title 12, book 4, of the *Recopilacion de las Indias*, above cited. A note shall be made upon said title deeds to the effect that this obligation has been complied with, to the end that the owners of such royal lands and their successors may hereafter be free from denunciation, summons, or other disturbance in their possession.

Where such possessors shall not be able to produce title deeds it shall be sufficient if they shall show that ancient possession, as a valid title by prescription; provided, however, that if the lands shall not be in a state of cultivation or tillage, the term of three months prescribed by law 11 of the title and book cited, or such other period as may be deemed adequate, shall be designated as the period within which the lands must be reduced to cultivation, with the warning that in case of their failure so to do the

lands will be granted, with the same obligation to cultivate them, to whomsoever may denounce them.

5. Likewise neither shall possessors of lands sold or adjusted by the various subdelegates from the year 1700 to the present time be molested, disturbed, or denounced, now or at any other time, with respect to such possession, if such sales or adjustments shall have been confirmed by me, or by the viceroy or the president of the court of the district in which the lands are located while authorized to exercise this power. In cases where the sales or adjustments shall not have been so confirmed, the possessors will present to the courts of their respective districts and to the other officials hereby empowered to receive the same, a petition asking for the confirmation of said sales and adjustments. After the proceedings outlined by the subdelegates in their order with respect to the measurement and valuation of the said lands, and with reference to the title issued therefor, shall have been duly completed, said courts and officials will make an examination of the same for the purpose of ascertaining whether the sale or adjustment has been made without fraud and collusion, and for an adequate and equitable price, and a similar examination shall be made by the prosecuting attorney of the district, to the end that, in view of all the proceedings and the purchase or adjustment price of the land, and the *media anata* having been duly, etc., paid into the royal treasury, as well as such additional sum

> as may be deemed proper, there will be issued to the possessor, in my royal name, a confirmation of his title, by virtue of which his possession and ownership of lands and waters which it represents will be fully legalized, to the end that at no time will he or his heirs or assigns be disturbed or molested therein.

These provisions were much more stringent than any which had preceded them, both in the warning (article 3) to occupants of public lands to present their instruments evidencing a right to possession for administrative adjudication, on pain of eviction, and providing (article 4), among other things, that proof of "*ancient possession*," i. e., possession prior to 1700, or for fifty-four years, would constitute a sufficient title by prescription, and would entitle the claimant to confirmation of the same.

Following the royal cedula of 1754, there were various royal orders (in 1797, 4 Legislacion Ultramarina, p. 688; in 1862, Gaceta de Manila, November 15,1864; and in 1876, Guia del Comprador Terrenos, p. 5) directing the observance of the cedula of 1754, and urging occupants of public lands, who had no grant or administrative title, to seek an adjustment (*composiciòn*) under existing laws.

The regulation of titles remained in this condition until the regulations of June 25, 1880 (Gaceta de Manila, September 10, 1880), were approved by royal decree. These are the most important of the modern legislative acts of Spain upon the matter of "adjust-

ment" (*composiciòn*) of titles to public lands, as distinguished from their sale, and are as follows:

Preface:

> SIR: The uncertain, and it may be said the precarious, state of real property in various parts of the Philippine Islands, as yet sparsely populated; the necessity for encouraging the cultivation of these lands; the advantage of increasing the wealth and products of the archipelago; the immense and immediate profit which must result to all classes of interests, public as well as private, from the substitution of full ownership, with all the privileges which by law accompany this real right, for the mere possession of the lands, have long counseled the adoption of the provisions contained in the following regulations, which, after consultation with the Philippine council, and in conformity with an order passed at a full meeting of the council of state, the subscribing minister has the honor to submit for the royal approval. These regulations refer not only to tenants of royal lands in good faith and by virtue of a valid title, but also to those who, lacking these, may either by themselves reducing such lands to cultivation or by the application of intelligence and initiative, causing their cultivation by others who lack these qualities, be augmenting the wealth of the archipelago. (Disposciones oficiales del Ramo de Montes de Filipinas, p. 34.)

The *regulations* are, in part, as follows:

> Upon the suggestion of the colonial minister, made in conformity with the decree of

the full meeting of the council of state, I hereby approve the attached regulations for the adjustment of royal lands wrongfully occupied by private individuals in the Philippine Islands.

Articles 1, 4, 5, 8, and part of article 6 are as follows:

ART. 1. For the purposes of these regulations, and in conformity with law 14, title 12, book 4, of the Recompilation of Laws of the Indies, the following will be regarded as royal lands: All lands whose lawful ownership is not vested in some private person, or, what is the same thing, which have never passed to private ownership by virtue of cession by competent authorities, made either gratuitously or for a consideration.

ART. 4. For all legal effects those will be considered proprietors of the royal lands herein treated who may prove that they have possessed the lands without interruption during the period of ten years by virtue of a good title and in good faith.

ART. 5. In the same manner, those who without such title deeds may prove that they have possessed their said lands without interruption for a period of twenty years, if in a state of cultivation, or for a period of thirty years, if uncultivated, shall be regarded as proprietors thereof. In order that a tract of land may be considered cultivated it will be necessary to show that it has been broken within the last three years.

ART. 6. Interested parties not included within the two preceding articles may legalize

their possession, and thereby acquire the full ownership of the said lands, by means of adjustment proceedings, to be conducted in the following manner: * * *

(5) Those who, entirely without title deeds, may be in possession of lands belonging to the state and have reduced said lands to a state of cultivation may acquire the ownership thereof by paying into the public treasury the value of the lands at the time such possessors or their representatives began their unauthorized enjoyment of the same.

(6) In case said lands shall never have been plowed, but are still in a wild state, or covered with forests, the ownership of the same may be acquired by paying their value at the time of the filing of the claim, as stated in the fourth paragraph.

Art. 8. If the interested parties shall not ask an adjustment of the lands whose possession they are unlawfully enjoying within the time of one year, or, the adjustment having been granted by the authorities, they shall fail to fulfill their obligation in connection with the compromise, by paying the proper sum into the treasury, the latter will, by virtue of the authority vested in it, reassert the ownership of the state over the lands, and will, after fixing the value thereof, proceed to sell at public auction that part of the same which, either because it may have been reduced to cultivation or is not located within the forest zone, is not deemed advisable to preserve as the state forest reservation.

67172—09——3

Both the preface and the regulations show, as does all the Spanish legislation on the subject, the fairness and equity which entitled occupants of public lands under claim of "ancient possession to complete title;" yet in this, as in each preceding legislative act, order, decree, or regulation, such claim could not be ripened into a fee simple title *except by proof before an administrative officer, his affirmative action on the claim, and a compliance with the regulations prescribed.*

There is no variation from this requirement, and the declaration is plain, repeated, and never abandoned, that upon failure to comply, as above, the occupant was held to have abandoned his inchoate claim, the lands, always the property of the Crown until alienated by its proper officers upon proof required by law, were freed from the cloud of a possible title by prescription, and the occupant became a mere trespasser, without any right, and subject to ejectment by the Crown at any time.

It appears that the regulations of June 25, 1880, were the subject of inquiry directed to officers in Manila charged with their execution, and that they were answered by an administrative circular published in the Gaceta de Manila of August 11, 1881, as follows:

> Should possessors of royal lands under color of title and in good faith seek adjustment?
>
> It is evident that they must do so, for it is to them that article 4 of the regulations refers, as also the following article covers other cases of possession under different circumstances.

> It should be well understood by you, and you should in turn have it understood by others, that the adjustment of lands whose ownership has not passed to private individuals by virtue of cession by competent authorities is optional only for those within the limits of the common district (*legua comunal*) as provided by article 7. In all other cases where the interested parties shall fail to present themselves for the adjustment of the lands occupied by them they shall suffer the penalties set forth in article 8 of said regulations.

But aside from this administrative construction of the regulations of 1880, there was legislative construction of them in royal decrees dividing the public lands in the Philippines wrongfully withheld by private persons (i. e., persons who had no administrative confirmation of their titles) into groups, and providing, further, for the filing and adjustment of claims to title, and for the sale of said lands. (December 26, 1884—*Berriz Anuario*, 1888, p. 117; August 31, 1888—*Berriz Anuario*, 1888, p. 120.)

Then followed the royal decree of February 13, 1894 (Gaceta de Manila, April 17, 1894), which in its article 4 provided:

> ART. 4. The title to all agricultural lands which were capable of adjustment (*composición*) under the royal decree of the 25th of June, 1880, but the adjustment of which has not been sought at the time of the promulgation of this decree in the Gaceta de Manila, will revert to the State. Any claim to such

> lands by those who might have applied for the adjustment of the same, but who have not done so at the above-mentioned date, will not avail them in anyway or at any time.

There was no subsequent Spanish legislation, pertinent to the questions here presented, up to the time of our possession of the Philippine Islands, on August 13, 1898.

This, then, was the situation of the claim of title by plaintiff in error to the lands here in controversy under the Spanish law as it was in force on August 13, 1898:

1. Mateo Cariño was in occupation of public lands in the Philippine Islands, claiming title thereto by prescription.

2. The Spanish law in force required that all persons who claimed title to public lands by prescription should, long prior to August 13, 1898, have presented and proved their claims, have complied with the legal regulations, and have secured legal title thereto by administrative adjudication, on pain of losing all claim to said lands, of being mere trespassers under the law, and subject to ejectment at any time by the public officials of the government.

3. Mateo Cariño had not proved his claim to title to said lands by prescription, had not secured legal title thereto by administrative adjudication, the time within which he could have done so had long passed, and he was, therefore, in the eyes of the law, a mere trespasser on the public lands of the Philippine

Islands at the date when they passed from the sovereignty of Spain to the sovereignty of the United States.

His inchoate rights by occupation were wiped out, and, under the law, his position was no different than it would have been if he had taken possession of these lands on August 12, 1898, and, in the face of the specific legislation set out above, as Cariño had complied with none of the requirements, no *presumption* of a grant or of an administrative adjudication in his favor could possibly arise. These lands were absolutely a part of the crown lands of Spain at the date of the ratification of the treaty of Paris, and passed as absolutely into the ownership of the United States, unclouded by any shadow of title in Cariño, who on April 11, 1899, was a bare trespasser on said lands. He does not claim to have acquired other rights since 1898. (Brief of plaintiff in error, p. 63.)

Under the treaty of Paris (Article VIII) no property or rights which by law belong to the peaceful possession of property of all kinds were impaired, on the cession of the Philippine Islands by Spain to the United States, and under the accepted principles of international law the local laws of the former sovereign of ceded territory remain in force until altered by the law-making power of the new sovereignty, unless incompatible with the laws and customs for the fundamental principles of the government of the new sovereignty. (*Am. Ins. Co.* v. *Canter*, 1 Pet., 511; *Cross* v. *Harrison*, 16 How., 164; *Leitensdorfer* v.

Webb, 20 How., 176.) In consonance with such custom and usage, upon the cession of the Philippine Islands to the United States, the local laws of Spain, applicable to the Philippine Islands, were continued in force by the Government of the United States, in so far as they were not incompatible with the fundamental principles and genius of our Government. And among the Spanish laws continued in force was the mortgage law and the civil code. Both had been modified by the law-making powers of the United States at the time this suit was originally brought, and have since been further modified.

The first legislation by Congress with relation to lands in the Philippine Islands is contained in the act of March 2, 1901 (31 Stat., 910), in which it is provided "That no sale or lease or other disposition of the public lands or the timber thereon or mining rights therein shall be made."

On August 7, 1901, the Philippine Commission passed its act No. 190, being a code of civil procedure applicable to the Philippine Islands, in which, in its section 795, it repealed all codes, statutes, acts, decrees, and orders theretofore promulgated, enacted, or enforced in the Philippine Islands prescribing the procedure in all civil actions. (1 Phil. Laws, 378.)

On July 1, 1902, Congress enacted the organic law of the Philippine Islands, in which were included the following provisions relating to the property and rights acquired by the United States in the Philippine

Islands under the treaty of Paris, among such property being the public lands in such islands:

SEC. 12. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States, are hereby placed under the control of the government of said islands, to be administered for the benefit of the inhabitants thereof, except as provided in this act.

SEC. 13. That the government of the Philippine Islands, subject to the provisions of this act and except as herein provided, shall classify according to its agricultural character and productiveness, and shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands, but such rules and regulations shall not go into effect or have the force of law until they have received the approval of the President, and when approved by the President they shall be submitted by him to Congress at the beginning of the next ensuing session thereof and unless disapproved or amended by Congress at said session they shall at the close of such period have the force and effect of law in the Philippine Islands: *Provided, That a single homestead entry shall not exceed sixteen hectares in extent.*

SEC. 14. That the government of the Philippine Islands is hereby authorized and empowered to enact rules and regulations and to prescribe terms and conditions to enable persons to perfect their title to public lands in said islands who, prior to the transfer of sovereignty from Spain to the United States, had fulfilled all or some of the conditions required by the Spanish laws and royal decrees of the Kingdom of Spain for the acquisition of legal title thereto yet failed to secure conveyance of title; and the Philippine Commission is authorized to issue patents, without compensation, to any native of said islands, conveying title to any tract of land not more than sixteen hectares in extent, which were public lands and had been actually occupied by such native or his ancestors prior to and on the thirteenth of August, eighteen hundred and ninety-eight.

SEC. 15. That the government of the Philippine Islands is hereby authorized and empowered, on such terms as it may prescribe by general legislation, to provide for the granting or sale and conveyance to actual occupants and settlers and other citizens of said islands such parts and portions of the public domain, other than timber and mineral lands, of the United States in said islands as it may deem wise, not exceeding sixteen hectares to any one person, and for the sale and conveyance of not more than one thousand and twenty-four hectares to any corporation or association of persons: *Provided*, That the grant or sale of such lands, whether the purchase price be paid at once or in partial payments, shall be conditioned upon

actual and continued occupancy, improvement, and cultivation of the premises sold, for a period of not less than five years, during which time the purchaser or grantee can not alienate or encumber said land or the title thereto; but such restriction shall not apply to transfers of rights and title of inheritance under the laws for the distribution of the estates of decedents.

SEC. 16. That in granting or selling any part of the public domain under the provisions of the last preceding section, preference in all cases shall be given to actual occupants and settlers; and such public lands of the United States in the actual possession or occupancy of any native of the Philippine Islands shall not be sold by said government to any other person without the consent thereto of said prior occupant or settler first had and obtained: *Provided*, That the prior right hereby secured to an occupant of land who can show no other proof of title than possession shall not apply to more than sixteen hectares in any one tract. (32 Stat. L., p. 691.)

ıe foregoing sections express the wise and in-ed judgment of the Congress of the United States the disposition of public lands in the Philippine ds, based upon observations of the needs of the le rom the time of our occupation, and advised informed by the experience of the Philippine nission as to the conditions and needs of the ıitants of the Philippine Islands. In section 12 provided that all the property and rights which have been acquired in the Philippine Islands

under the treaty of Paris, "except such land or other property as shall he designated by the President of the United States for military and other reservations of the Government of the United States," are placed *under the control of the government of the Philippine Islands*, subject to no limitations whatever such as are provided in the act itself, which states the objects and purposes of the Government of the United States toward the people and lands of the Philippine Islands, namely, that they are to be "*administered for the benefit of the inhabitants hereof.*" The limitations imposed by the act are:

That the government of the Philippine Islands shall classify the public lands (other than timber or mineral lands) according to their agricultural character and shall make rules and regulations for their lease, sale, or other disposition, and that such rules and regulations shall not be effective or have the force of law until approved by the President and the Congress. (Sec. 13.)

The government is authorized and directed to make rules and regulations and to prescribe the terms and conditions to enable persons to perfect their titles to public lands who, prior to the transfer of sovereignty, had fulfilled all or some of the laws in force at the time of the change of sovereignty, and yet had failed to secure conveyance of title. (Sec. 14.) Sections 15 and 16 grant to actual "*occupants and settlers*" of the public lands certain "*prior rights of purchase,*" and a sale is prevented in such cases without the consent of such settlers and occupants, or until

by their own laches they have forfeited their preference rights.

Pursuant to the authority and direction contained in section 13 the capabilities of the agricultural lands have been ascertained; "the rules and regulations" referred to are contained in act 926 of the Philippine Commission, entitled "The public land law," enacted October 7, 1903, but by its section 78 the province of Benguet, among others, was excepted from its provisions. Subsequently, in act 1224 of the Philippine Commission, enacted and in force August 31, 1904, it was provided that the court of land registration, established by the act of the Philippine Commission numbered 436 (the land registration act), should have no jurisdiction over lands lying within the province of Benguet, among others, or of lands set apart for military reservations:

> *And provided further*, That said court may have jurisdiction over applications for registration of title to land situated in any of the provinces aforesaid whenever the applicant has received a written royal grant, decree, or title to such land from the Kingdom of Spain, and shall file such royal grant, decree, or title with his application for registration.

The rules and regulations promulgated by the Philippine Commission in act No. 926, in accordance with the authority and direction contained in the act of Congress of July 1, 1902, provided in the case of certain "*actual occupants and settlers*" mentioned in sections 15 and 16 of the act of Congress, and by

the following paragraphs of section 54 of said Philippine act No. 926:

> 4. All persons who were entitled to apply and did apply for adjustment or composition of title to lands against the Government under the Spanish laws and royal decrees in force prior to the royal decree of February thirteenth, eighteen hundred and ninety-four, but who failed to receive title therefor through no default upon their part;
>
> 5. All persons who were entitled to a gratuitous title to public lands by "possessory proceedings" under the provisions of articles nineteen and twenty of the royal decree of the King of Spain issued February thirteenth, eighteen hundred and ninety-four, and who, having complied with all the conditions therein required, failed to receive title therefor through no default upon their part; and
>
> 6. All persons who by themselves or their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of agricultural public lands, as defined by said act of Congress of July first, nineteen hundred and two, under a bona fide claim of ownership except as against the Government, for a period of ten years next preceding the taking effect of this act, except when prevented by war or *force majeure*, shall be conclusively presumed to have performed all the conditions essential to a government grant and to have received the same, and shall be entitled to a certificate of title to such land under the provisions of this chapter.

As before stated, during the time covered by the litigation of this case in the Philippine Islands, the province of Benguet had by legal enactment been withdrawn from the operation of act 926, and therefore the plaintiff in error took, as he now disclaims, no rights thereunder. It is true that the operation of act 926 has since been extended to include the province of Benguet by resolution of the Philippine Commission, dated August 5, 1904, but this would give to plaintiff in error, if anything, only the right to institute a proceeding *now*, claiming its benefits.

On October 10, 1903, the Government of the United States, by proclamation of the President, set aside a tract of land for a military post and reservation which includes a large portion of the land in question, and has since been occupied by the army of the United States for the purposes specified. This reservation was exactly set forth by metes and bounds. The contention of the plaintiff in error (his brief, pp. 7–8) that the proceeding instituted by him in February, 1901, in the court of first instance of the province of Benguet, under articles 390, et seq. of the mortgage law, is of no importance to a determination of the question presented in this case, and has no effect other than the possible one of adding to the force of the testimony as to his "ancient possession," which fact is abundantly established by other evidence, and is not in controversy.

ARGUMENT.

I.

This court has not jurisdiction to review this case upon writ of error.

Section 10 of the act of July 1, 1902 (32 Stat., 691, 695), provides:

> That the Supreme Court of the United States shall have jurisdiction to review, revise, reverse, modify, or affirm the final judgments and decrees of the supreme court of the Philippine Islands in all actions, cases, causes, and proceedings now pending therein or hereafter determined thereby in which the Constitution or any statute, treaty, title, right, or privilege of the United States is involved, or in causes in which the value in controversy exceeds twenty-five thousand dollars, or in which the title or possession of real estate exceeding in value the sum of twenty-five thousand dollars, to be ascertained by the oath of either party or of other competent witnesses, is involved or brought in question; and such final judgments or decrees may and can be reviewed, revised, reversed, modified, or affirmed by said Supreme Court of the United States *on appeal or writ of error by the party aggrieved, in the same manner, under the same regulation, and by the same procedure, as far as applicable,* as the final judgments and decrees of the circuit courts of the United States.

It is fundamental that this court can review actions at law pending in circuit courts of the United States only by writ of error and proceedings in equity only

by appeal. It therefore becomes necessary to determine whether this is an action at law or a proceeding in equity.

The proceedings for the adjudication and registration of titles to lands in the Philippine Islands provided for in Act No. 496 of the Philippine Commission are, in their nature, actions in equity rather than actions at law.

The material sections of the act follow:

Section 2 confers upon the court of land registration jurisdiction of all applications for the registration of title to lands in the Philippine Islands "with power to hear and determine all questions arising upon such applications," subject to the right of appeal. "The proceedings upon such applications shall be proceedings in rem against the land and the buildings and improvements thereon, and the *decrees* shall operate directly on the land and the buildings and improvements thereon, and vest and establish title thereto."

Section 14 provides that "every *order, decision, and decree* of the court of land registration shall be subject to *appeal* to the court of first instance of the city or province where the land lies, concerning which the *order, decision, or decree* appealed from was made; but the proceeding shall not pass to the court of first instance for review upon the appeal until final determination by the court of land registration of the whole proceeding in which the *order, decision, or decree appealed* from was made. The appeal shall be made and entered within thirty days from the date of the final *order, decision, or decree.*" The case "shall be tried

by the court of first instance as other actions are tried in that court. All competent testimony which has been taken in writing before the court of land registration may be used on the trial in the court of first instance. Questions of law arising in the court of first instance on trial of the appeal may be taken to the Supreme Court for revisions by any party aggrieved, in the same manner as in ordinary actions in the court of first instance."

Section 16 provides that "if the party appealing does not prosecute his appeal within the time limited, the original *order, decision, or decree* shall stand as if no appeal had been taken."

Section 21 prescribes a form of petition in which, *inter alia*, the applicant asks that his title be "registered and confirmed."

Section 35 provides that in the case of an order upon default "the court may enter a decree *confirming* the title of the applicant and ordering registration of the same."

> SECTION 37. If in any case the court finds that the applicant has not proper title for registration, a *decree* shall be entered dismissing the application. * * *
>
> SECTION 38. If the court, after hearing, finds the applicant has title as stated in his application, and proper for registration, *a decree of confirmation and registration* shall be entered. Every decree of registration shall bind the land and *quiet title thereto*, subject only to the exceptions stated in the following section. It

> shall be conclusive upon and against all persons, including the Insular Government and all the branches thereof, whether mentioned by name in the application, notice, or citation, or included in the general description "To all whom it may concern."

Section 40 provides that every decree of registration shall contain a description of the land as finally determined by the court and shall set forth the estate of the owner and liens, incumbrances, etc., thereon.

Prior to the American occupation of the islands there was, for the most part, no system by which title could be recorded or registered. The obvious purpose of the land-registration act was to make title to all lands in the Philippine Islands definite and certain through a recording system and by decrees confirming and quieting titles. In doing this many disputes as to title, boundaries, incumbrances, etc., would necessarily arise. Accordingly, the law provides that these questions shall be determined at the time application is made for registration of the lands.

In the old courts of chancery a bill of peace and bill *quia timet*, i. e., to remove a cloud upon the title of real estate, could be maintained. The characteristics of these two forms of bills are best described in *Holland* v. *Challen* (110 U. S., 15):

> A bill of peace against an individual reiterating an unsuccessful claim to real property would formerly lie only where the plaintiff was

in possession and his right had been successfully maintained. The equity of the plaintiff in such cases arose from the protracted litigation for the possession of the property which the action of ejectment at common law permitted. That action being founded upon a fictitious demise, between fictitious parties, a recovery in one action constituted no bar to another similar action or to any number of such actions. A change in the date of the alleged demise was sufficient to support a new action. Thus the party in possession, though successful in every instance, might be harassed and vexed, if not ruined, by a litigation constantly renewed. To put an end to such litigation and give repose to the successful party, courts of equity interfered and closed the controversy. To entitle the plaintiff to relief in such cases the concurrence of three particulars was essential: He must have been in possession of the property, he must have been disturbed in its possession by repeated actions at law, and he must have established his right by successive judgments in his favor. Upon these facts appearing the court would interpose and grant a perpetual injunction to quiet the possession of the plaintiff against any further litigation from the same source. It was only in this way that adequate relief could be afforded against vexatious litigation and the irreparable mischief which it entailed. Adams on Equity, 202; Pomeroy's Equity Jurisprudence, 248; *Stark* v. *Starrs*, 6 Wall., 402; *Curtis* v. *Sutter*, 15 Cal., 259; *Shepley* v. *Rangeley*, 2 Ware, 242;

Devonsher v. *Newenham*, 2 Schoales & Lef., 199.

* * * * *

A bill *quia timet*, or to remove a cloud upon the title of real estate, differed from a bill of peace in that it did not seek so much to put an end to vexatious litigation respecting the property, as to prevent future litigation by removing existing causes of controversy as to its title. It was brought in view of anticipated wrongs or mischiefs, and the jurisdiction of the court was invoked because the party feared future injury to his rights and interests. Story's Equity, 826. To maintain a suit of this character it was generally necessary that the plaintiff should be in possession of the property, and, except where the defendants were numerous, that his title should have been established at law or be founded on undisputed evidence or long-continued possession. *Alexander* v. *Pendleton*, 8 Cranch, 462; *Peirsoll* v. *Elliott*, 6 Pet., 95; *Orton* v. *Smith*, 18 How., 263.

In order to maintain the action of ejectment at common law, possession of the land by the defendant was essential. As already pointed out by this court, a bill of peace or bill to remove a cloud could not be maintained unless the plaintiff was in possession. In the development of this country it has been found necessary to provide a procedure for trying and quieting titles when neither party is in possession of the land, and now nearly every State has a statute by which relief can be obtained in such cases. In

referring to such statutes this court in *Holland* v. *Challen*, *supra*, said:

> It is certainly for the interest of the State that this jurisdiction of the court should be maintained, and that causes of apprehended litigation respecting real property, necessarily affecting its use and enjoyment, should be removed; for so long as they remain they will prevent improvement and consequent benefit to the public. It is a matter of every-day observation that many lots of land in our cities remain unimproved because of conflicting claims to them. The rightful owner of a parcel in this condition hesitates to place valuable improvements upon it, and others are unwilling to purchase it, much less to erect buildings upon it, with the certainty of litigation and possible loss of the whole. And what is true of lots in cities, the ownership of which is in dispute, is equally true of large tracts of land in the country. The property in this case, to quiet the title to which the present suit is brought, is described in the bill as unoccupied, wild, and uncultivated land. Few persons would be willing to take possession of such land, inclose, cultivate, and improve it, in the face of a disputed claim to its ownership. * * * It is manifestly for the interest of the community that conflicting claims to property thus situated should be settled, so that it may be subjected to use and improvement.

This statement is particularly applicable to conditions in the Philippines and the object to be accomplished by the land registration act.

In the early history of Kentucky a law was passed providing that any person having a legal title to possession of lands might institute a suit against any other person setting up a claim thereto and the defendant might be decreed to release his claim. A bill in equity was filed, under this section, in the Federal Circuit Court in the case of *Clark* v. *Smith* (13 Pet., 195).

As pointed out in the case of *Holland* v. *Challen*, this bill, in the case of *Clark* v. *Smith*, was a departure from the requirements of the old chancery proceedings in that it did not show disturbance of possession and adjudication sustaining title. The court held that a federal court of equity had jurisdiction of it, saying in part (pp. 202, 203):

> Conflicts of title were unfortunately so numerous that no one knew from whom to buy or take lands with safety, nor could improvements be made without great hazard by those in possession who had conflicting claims hanging over them, and which might thus continue for half a century; the writ of right being limited to fifty years in some cases—that is, where it was brought upon the seizin of an ancestor or predecessor—and to thirty years if on the demandant's own seizin. During all which time the party in possession had no power to litigate, much less to settle the title at law; for he might be harassed by many actions of ejectment and his peace and property destroyed, although always successful; by no means an uncommon occurrence. This evil it was the object and policy of the legis-

> lature to cure, not so much by prescribing a mode of proceeding as by conferring a right on him who had the better title, and the possession, to draw to him the outstanding inferior claims. * * * Kentucky has the undoubted power to regulate and protect individual rights to her soil and to declare what shall form a cloud on titles; and having so declared, the courts of the United States, by removing such clouds, are only applying an old practice to a new equity created by the legislature, having its origin in the peculiar condition of the country. * * * The state legislatures certainly have no authority to prescribe the forms and modes of proceeding in the courts of the United States, but having created a right and at the same time prescribed the remedy to enforce it, if the remedy prescribed is substantially consistent with the ordinary modes of proceeding on the chancery side of the federal courts, no reason exists why it should not be pursued in the same form as in the state courts; on the contrary, propriety and convenience suggest that the practice should not materially differ where titles to lands are the subjects of investigation. And such is the constant course of the federal courts.

In *Holland* v. *Challen*, supra, a bill in equity to quiet title was filed in the Circuit Court, under a Nebraska statute, which authorized the bringing of such a bill whether the plaintiff was in possession or not. The court held that the equity jurisdiction of the circuit courts should be extended to embrace such

bill. The court said, in part (110 U. S. at pp. 4–25):

> *The truth is that the jurisdiction to relieve the holders of real property from vexatious claims to it casting a cloud upon their title, and thus disturbing them in its peaceable use and enjoyment, is inherent in a court of equity; and though conditions to its exercise have at different times been prescribed by that court, both in England and in this country, they may at any time be changed or dispensed with by the legislature without impairing the general authority of the court.* Pomeroy's Equity Jurisprudence, par. 1398. The equitable rights of parties in Nebraska claiming the legal title to real property are simply enlarged by its statute, not changed in character. And the language used by this court, speaking by Mr. Justice Bradley, in the *Broderick Will Case*, 21 Wall., 520, is appropriate here: "Whilst it is true that alterations in the jurisdiction of the state courts can not affect the equitable jurisdiction of the circuit courts of the United States, so long as the equitable rights themselves remain, yet an enlargement of equitable rights may be administered by the circuit courts as well as by the courts of the State." And it may be affirmed of this case, what was said as probably true of that one, that it is "a case in which an enlargement of equitable rights is affected, although presented in the form of a remedial proceeding." "Indeed," as the court there observed, "much of equitable jurisdiction consists of better and more effective remedies for attaining the rights of parties."

No adequate relief to the owners of real property against the adverse claims of parties not in possession can be given by a court of law. If the holders of such claims do not seek to enforce them, the party in possession, or entitled to the possession—the actual owner of the fee—is helpless in the matter unless he can resort to a court of equity.

It does not follow that by allowing in the federal courts a suit for relief under the statute of Nebraska, controversies properly cognizable in a court of law will be drawn into a court of equity. There can be no controversy at law respecting the title to or right of possession of real property when neither of the parties is in possession. An action at law, whether in the ancient form of ejectment or in the form now commonly used, will lie only against a party in possession. Should suit be brought in the federal court, under the Nebraska statute, against a party in possession there would be force in the objection that a legal controversy was withdrawn from a court of law; but that is not this case, nor is it of such cases we are speaking. Undoubtedly, as a foundation for the relief sought, the plaintiff must show that he has a legal title to the premises, and generally that title will be exhibited by conveyances or instruments of record, the construction and effect of which will properly rest with the court. Such, also, will generally be the case with the adverse estates or interests claimed by others. This was the character of the proofs establishing the title of the complainant in *Clark* v. *Smith*, already cited. But

> should proofs of a different character be produced, the controversy would still be one upon which a court of law could not act. It is not an objection to the jurisdiction of equity that legal questions are presented for consideration which might also arise in a court of law. If the controversy be one in which a court of equity only can afford the relief prayed for, its jurisdiction is unaffected by the character of the questions involved.

This case has been frequently referred to with approval and applied.

These cases are conclusive authority that the proceeding provided for by the act of land registration is of equitable nature. That act authorizes the commencement of a proceeding to confirm and quiet title to lands, whether or not the applicant or any other person is in possession. In this respect it is exactly like the state statutes, such as the one involved in the case of *Holland* v. *Challen*, *supra*. The fact that where it appears in the bill of application that some party other than the complainant or applicant is in possession of the lands in question, courts of equity in this country will not entertain a suit to quiet title, as there is an adequate remedy at law by ejectment, is immaterial in this case, for it appears by the application that the applicant is in possession of the land. Moreover, the whole proceeding and relief sought, even in a case where persons other than the applicant are in possession, are equitable and it would be unreasonable to call it an action at law.

The only action at law in our jurisprudence in which the title to land can be tried is ejectment. That, however, is a mixed action and not an action in rem, as it is expressly provided the proceeding under the land registration act shall be. An action in trespass in which questions relating to boundaries are sometimes tried could hardly be said to be an action to determine the title to land. That, however, is a personal action, and, like ejectment, bears no analogy to the proceeding under this act.

The whole proceeding in the Philippine courts, prescribed by the act, with one exception, to be hereafter noted, follows exactly, in form and substance, our proceedings in equity rather than actions at law; the trial is by the court, which determines questions of fact and of law; the method of review in the Philippine courts is by appeal, not by writ of error. The adjudication of the court is by decree, not by judgment. The act throughout refers to the order, decision, or decree of the court, and expressly provides that its final determination shall be by decree. Only in one instance is the word *judgments* used, and that is in section 17, which provides that the court in all matters over which it has jurisdiction may enforce its orders, judgments, or decrees in the same manner as orders, judgments, or decrees are enforced by judgments in the Court of First Instance. The use of the word "judgments" in this section manifestly is without importance, and does not detract in any way from the force of the other positive provisions of

the statute which make it clear that the adjudication of the court is by decree rather than by judgment. In this connnection it is to be noted that section 10 of the act of July 1, 1902, above referred to, gives this court power to review "judgments and decrees" by writ of error or appeal; that is, judgments may be reviewed by writ of error and decrees by appeal. In cases arising under the land registration act, the adjudication is by decree, and therefore, under the express language of said section 10 it can be reviewed only by appeal.

It may possibly be suggested that as section 14 of the land registration act provides that the Supreme Court of the Philippine Islands can review decisions of the Court of First Instance only upon matters of law, and as it is a general rule that writs of error bring up questions of law, and appeals both questions of law and fact, that, therefore, the proper procedure to review decisions of the Supreme Court of the Philippine Islands in these cases is by writ of error. But such a suggestion is readily seen to be fallacious.

In the first place it is very doubtful whether the effect of section 14 is to limit the power of review by this court to questions of law only. By the act of Congress of July 1, 1902 (32 Stat., 691), Congress provided, in substance, that decrees of the Supreme Court of the Philippine Islands in equity cases can be reviewed by this court by appeal, which necessarily means that questions of fact as well as of law

are to be reviewed by this court in such cases. The thing which is to be reviewed is the decree which, unless expressly restricted, involves consideration of facts and law. It does not necessarily follow that because by the local laws of the Philippine Islands the Supreme Court of the islands in reviewing the decree of the Court of First Instance is limited to questions of law that this court in reviewing the same decree is likewise limited; indeed, Congress seems to have expressed the contrary view in the act of July 1, 1902. It may well be argued, therefore, that although the Supreme Court of the Philippine Islands in its review of the case was limited to questions of law, yet when the case comes into this court by appeal the whole case, including questions of fact as well as of law, is open to review. If such is the case the suggestion above made is clearly without foundation. However, if it is decided that because of section 14 of the land registration act this court is limited to a review of questions of law, the proper method to secure such review is by appeal.

In *Dower* v. *Richards* (151 U. S., 658) this court reviewed the history of legislation giving to this court appellate jurisdiction upon writ of error and appeal. The court said, in part (pp. 663–664):

> In the legislation of Congress, from the foundation of the Government, a writ of error, which brings up matter of law only, has always been distinguished from an appeal, which, *unless expressly restricted*, brings up both law and fact.
>
> * * * * *

In the first judiciary act the whole appellate jurisdiction of this court was limited to matters of law. While an appeal lay from the District Court to the Circuit Court in admiralty cases, neither the judgments or decrees of the Circuit Court, whether in law, equity, or admiralty, nor judgments or decrees of the highest court of a State, could be reviewed by this court except by writ of error. Act of September 24, 1789, c. 20, §§19, 22–25; 1 Stat., 83–86.

Under that act it was held that a decree in admiralty could not be reviewed by this court in matter of fact, and Chief Justice Ellsworth, after laying down the rule that the appellate jurisdiction of this court could only be exercised within the regulations prescribed by Congress, said: "It is to be considered, then, that the judicial statute of the United States speaks of an appeal and of a writ of error, but it does not confound the terms nor use them promiscuously. They are to be understood, when used, according to their ordinary acceptation, unless something appears in the act itself to control, modify, or change the fixed and technical sense which they have previously borne. An appeal is a process of civil-law origin, and removes a cause entirely, subjecting the fact, as well as the law, to a review and retrial; but a writ of error is a process of common-law origin, and it removes nothing for reexamination but the law." *Wiscart* v. *Dauchy*, 3 Dall., 327. * * *

In 1803 Congress substituted an appeal from the Circuit Court to this court, instead of a

> writ of error, in cases in equity and in admiralty; and upon such an appeal the facts, as well as the law, were open to review in both those classes of cases until 1875, when the appeal in admiralty was restricted to questions of law. * * *
>
> Judgments of the Circuit Court in actions at law have remained reviewable by writ of error only.

It is thus seen that until 1803 this court could review actions only by writ of error which was the common-law procedure. It was characteristic of this common-law procedure of review that only questions of law could be considered by the appellate court and, accordingly, the Supreme Court, though not without dissent, took the position that it could not, in any case, review any question of fact. By the act of March 3, 1803, the civil-law procedure for review was made applicable in cases of equity, and it was provided that upon such appeal a transcript of all "other proceedings of what kind soever in the cause shall be transmitted to" the Supreme Court and "that no new evidence shall be received in the said court on the hearing of such appeal." It was a characteristic of the civil-law appeal that the appellate court should review questions of fact as well as questions of law, and it is apparent from the act of 1803 Congress intended to carry this characteristic into the appeal provided for in equity cases. The court has so construed that act.

This distinction in the method of review of cases at law and in equity has continued without interruption down to the present time. The fact that Congress may in some cases limit these common-law and civil-law characteristics of writs of error and appeals by making the facts in some cases at law reviewable by the appellate court or providing that in some equity cases the findings of facts by the lower court shall be conclusive upon the appellate court would not in any way alter the procedure for obtaining a review of the case, namely, by writ of error when it is an action at law and by appeal when it is a proceeding in equity. In fact, Congress has in a number of instances done that very thing, but it has never been held that it was intended thereby to alter the method of obtaining a review.

The Tucker Act, as was held by this court in *Chase* v. *United States* (155 U. S., 480), provides that in cases of equity as well as at law the lower court shall make a finding of fact, which shall be conclusive upon the Supreme Court, which is given power to review the judgment or decree of the lower court by writ of error or appeal, whichever may be applicable. The mere fact that in equity causes arising under that statute this court has not the power to review questions of fact has not been held, and we do not think it could be reasonably held, to change the method of review in such cases from appeal to writ of error. So in the present case, an equity proceeding, the mere fact that the Philippine Commission, by limiting the power of review of the Supreme Court of the Philip-

pine Islands to questions of law, may limit the power of this court to the review of questions of law only can not be held to have the effect of altering the procedure for the review of equity causes provided for by Congress.

By the act of April 7, 1874 (18 Stat., 27), it was provided that the appellate jurisdiction of this court over the judgments and decrees of territorial courts in cases of trial by jury shall be exercised by writ of error and in all other cases by appeal, and that upon appeal a statement of facts should be made in the nature of a special verdict, and the rulings of the court on the admission or rejection of evidence shall be certified to this court. It is thus seen that while Congress has confined the power of this court in reviewing equity cases to questions of law, it has prescribed an appeal as the method of obtaining review.

By the act of June 1, 1898 (30 Stat., 428), providing for the adjustment of controversies between interstate carriers and their employees, it is provided (section 4) that the review of decisions of Circuit Courts by the Circuit Court of Appeals may be had upon appeal, but the appellate jurisdiction of that court is limited to questions of law.

In this same connection we may note that while the act of February 16, 1875 (18 Stat., 315), limited the reviewing power of this court in admiralty cases to questions of law, the proper method of obtaining a review of such cases continued to be by appeal.

For these reasons the writ of error should be dismissed.

II.

THE MERITS.

(a) What title, if any, did Mateo Cariño possess in said lands at the date of the change of sovereignty from Spain to the United States?

1. The claim made by counsel for plaintiff in error (brief, p. 13) that Cariño had any right *jure gentium* may be summarily disposed of. During the whole period of Spanish sovereignty over the Philippine Islands there had been no segregation of the tribe of Igorrotes from the body of the Philippine people as to the operation of the general law to them, in common with all others. The Spanish law nowhere distinguishes them from other inhabitants of the archipelago, nor did it ever assume a paternal or fiduciary relation toward the Igorrotes, analogous to that which the United States assumed toward the aboriginal American Indian. No reservation of land was ever set aside for the Igorrotes nor did the Spanish Government ever attempt to interfere in their internal tribal affairs; in fact, its effort to exercise governmental functions within the territory occupied by this tribe was feeble and futile.

The distinction in status between the Igorrote in his relation to the Spanish laws and the American Indian in relation to the laws of the United States is at once obvious and apparent. The cases decided by this court affecting the tribal rights of Indians have no possible application to any rights of Mateo Cariño, either *jure gentium* or otherwise, and the

cases decided by this court, and cited by plaintiff in error in his brief, have no possible application, for the reason that those cases were decided with relation to the rights of Indians conferred by treaty, or relating to tribal lands or reservations made by the Government of the United States.

2. The claim of title advanced by plaintiff in error in the court of land registration, in the court of first instance, and in the Supreme Court of the Philippine Islands has been based mainly upon "*Prescription*" as valid against the Crown of Spain, and, therefore, surviving the change of sovereignty, and required to be recognized under article 8 of the treaty of Paris and subsequent congressional legislation of the United States.

That this position is untenable is amply proven by an examination and review of the Spanish law as applied to tenancies under the conditions and upon the basis claimed by plaintiff in error. It is true that the legislation of Spain always treated native occupants of public lands in the Philippine Islands with equity and consideration as to the titles which they claimed; ample provision was made for the full protection of rights claimed under "ancient possession;" from the first legislative act of Spain relating to such titles to its last declaration upon that subject, contained in the royal decree of February 13, 1894, such claimants are empowered and urged to present their claims for adjustment (composición) and establishment, and for the issuance of documents of title con-

firming the same. In each case, however, it was a *prerequisite absolutely necessary* that evidence of such title should be submitted to the administrative officials empowered with authority for judicial determination of the same, whether the claim arose out of an alleged prior grant or immemorial occupation, and in every case warning was given to the occupants of public lands that, unless such regulations and requirements were complied with, the lands so occupied, titles to which had not been proven before the administrative officers, should revert to the Crown and become public lands of the state. Plaintiff in error may have made some effort to comply with these requirements, but it was ineffective and not pressed to the point required by law, and therefore in contemplation of law is as if it had never been made. The machinery of the law was established and the requirements were definite, the testimony adduced in support of the claim of plaintiff in error as to his truth and veracity is creditable to him, but could scarcely be held to affect titles governed by the laws in force. It is also interesting to learn from his testimony (Rec., fol. 111) that he was told by Governor Martinez that it was not necessary for him to have documents of title "*because the land belonged to us, and no one could usurp them or take them from us.*" A court would be loath to accept such a declaration, made ex parte, as a substitute or an excuse for a compliance with a law of the land. It therefore follows that at the time of the change of sovereignty from Spain to the United

States, as to the lands here in question, plaintiff in error was a mere trespasser, or "squatter," and, under the law of Spain then in force, was liable to eviction by the Crown of Spain for an unauthorized occupation of its public lands.

This, then, was his situation: His claim *jure gentium* is untenable because as a native of the Philippine Islands his rights to public land were not different, by reason of his tribal relation, from those of any other resident of said islands; and his inchoate title by prescription, requiring its submission to an administrative official, and determination by him, had been lost by his failure to avail himself of the beneficent and favorable laws of his sovereignty.

Article 8 of the treaty of Paris recognized only "*property*" of the inhabitants of the conquered or ceded territory as entitled to the respect, protection, and confirmation of the United States as the succeeding sovereignty. No obligation either under said treaty or under the accepted principles of international law rested upon the United States to recognize any claims which may at some former time have been good under the laws of Spain, and entitled to perfection, but which claimant had lost by his own laches. While the laws of Spain relating to property rights in so far as the same did not conflict with the spirit of our government were continued in force, this did not serve to revive and make effective inchoate claims which could not have been enforced under said laws during Spanish sovereignty.

(b) How is the situation of Mateo Cariño, plaintiff in error, with relation to the title of said lands, changed by legislation of the United States or of the Philippine Islands since the change of sovereignty?

It was provided under the act of Congress approved March 2, 1901 (31 Stat., 910):

> *Until a permanent government shall have been established in said* [*Philippine*] *archipelago* * * * That no sale or lease or other disposition of the public lands or the timber thereon or the mining rights therein shall be made.

This legislation continued the status of the public lands and of the occupants thereof until further action should be taken by Congress or by its created instrumentality. Then followed the organic act of July 1, 1902, which, in its sections 12 to 16, inclusive, provided for the protection of inchoate titles to lands in the Philippine Islands, similar to and including such rights as are claimed by plaintiff in error. It was not contemplated in said act, however, that the machinery, by tribunals and regulations, necessary for the determination of such rights, should be created and designated by the act of Congress. On the contrary, there was provided in said act a bill of rights, constitution, and the creation of a government for said islands, separate entirely from that of the United States, although retained under the jurisdiction of Congress. This government, so created, was empowered and directed by said act to frame and promulgate rules and regulations governing the public lands of the Philippine Islands, and all claims thereto,

and was authorized and directed to create and establish courts and tribunals for the decision of those, and of all other questions arising in the government of said islands. In pursuance of the powers so conferred, the government of the Philippine Islands established a court of land registration (act 496), and in its act 926 (land registration act), prescribed and set out in detail the rules and regulations governing the public lands of the Philippine Islands, and the titles thereto, however claimed, and of the disposition thereof. These rules and regulations govern the jurisdiction and operation of the Court of Land Registration, which was not authorized to adopt other or different jurisdiction or rules for its operation. The rules and regulations adopted in act 926 were suspended as to the province of Benguet, in which this land is situated, and there was, for said reason, no forum in which the plaintiff in error could have legally established the title claimed by him, under the rules and regulations governing the same, and the Court of Land Registration, in attempting to hear and to judicially determine his said rights, was without jurisdiction, as was held by the Court of First Instance, and has been held by the Supreme Court of the Philippine Islands in a line of cases in which this question was presented, beginning with the case of *Valenton et al.* v. *Murciano* (3 Phil. Rep., 537), in which case the court, after reviewing the Spanish legislation hereinbefore set out, held, under a claim of title by prescription: That during the period covered (1860 to 1892, more than thirty

years) "there was no law in force in these islands by which the plaintiffs could obtain the ownership of these lands by prescription, *without any action by the State*, and that the judgment below declaring the defendant owner of the lands must be affirmed." In that case the defendant had bought public lands in the Philippine Islands at a public sale held by the government in accordance with the law in force, and the sale was attacked by plaintiffs in error on the ground that their title by prescription precluded such action on the part of the government, and that the sale conferred no right or title upon the purchaser. This was followed by the case of *Cansino et al.* v. *Valdez et al* (6 Phil. Rep., 320), in which the holding in the *Valenton* case was followed, the claim being based upon analogous facts.

Then followed the case of *Tiglao* v. *The Insular Government* (7 Phil. Rep., 80). The plaintiff in that case presented a petition to the court of land registration praying to be adjudged the owner of a tract of land transferred to him by the *principalia* of a pueblo. The court held that the transfer conveyed no title, and the claimant, not having been in proper occupancy for a sufficient period to entitle him to register under the prescription set forth in Act No. 926, his petition was dismissed, and such action was confirmed by the Supreme Court, following the decision in the *Valenton* and *Cansino cases, supra.* Next followed, in the supreme court of the Philippine Islands, the case here at issue (*Cariño* v. *The Insular Government* 7 Phil.

Rep., 132). Mateo Cariño filed a petition in the court of land registration praying to be inscribed as the owner of a tract of land in the municipality of Baguio, in the province of Benguet, here at issue. Judgment was entered in the court of land registration in favor of the petitioner, from which judgment the insular government *appealed*, in accordance with the law then in force, to the court of first instance of the province of Benguet. The case was therein tried *de novo*, and judgment was entered dismissing the petition. The petitioner then brought the case to the Supreme Court of the Philippine Islands upon a bill of exceptions, and that court, in an opinion by Willard, J., in which all its members concurred, held that, Cariño not having shown any title from the government, and the land being agricultural, the case is governed by the decisions in *Valenton* v. *Murciano*, *Cansino* v. *Valdez*, and *Tiglao* v. *The Insular Government*, *supra*. (Rec., pp. 179–183.)

From the foregoing it would seem that the irrefutable conclusions are:

(1) That this court is without jurisdiction to review this case upon writ of error.

(2) That plaintiff in error, although an occupant of the lands in question by "ancient possession," prior to the change of sovereignty in the Philippine Islands from Spain to the United States, having failed to perfect said claim under the laws of Spain in force at the date of said change of sovereignty, was a mere trespasser upon the lands so occupied, and possessed no

vested right of property which, of itself, brought it within the protection and guarantee offered by the treaty of peace and accepted by international law, or the decisions of this court.

(3) That under the law no title by prescription can be obtained to agricultural lands in the Philippine Islands; that the statute of limitations did not run against the Crown of Spain in the Philippine Islands, and that there is in said islands no presumption of a grant from long occupation.

(4) That the claim of plaintiff in error, not falling under the provisions of Philippine Act No. 926 during the period of this litigation, the same was not available in his behalf; that he took no rights thereunder, and that the court of land registration of the Philippine Islands was therefore without jurisdiction to determine this case.

It is respectfully submitted that the writ of error should be dismissed or that the judgment below should be affirmed.

HENRY M. HOYT,
Solicitor-General.

PAUL CHARLTON,
Law Officer, Insular Bureau,
War Department,
Of Counsel.

O

CARIÑO *v.* THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS.

ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 72. Argued January 13, 1909.—Decided February 23, 1909.

Writ of error is the general, and appeal the exceptional, method of bringing cases to this court. The latter method is in the main confined to equity cases and the former is proper to bring up a judgment of the Supreme Court of the Philippine Islands affirming a judgment of the Court of Land Registration dismissing an application for registration of land.

Although a province may be excepted from the operation of act No. 926 of 1903 of the Philippine Commission which provides for the registration and perfecting of new titles, one who actually owns property in such province is entitled to registration under act No. 496 of 1902, which applies to the whole archipelago.

While, in legal theory and as against foreign nations, sovereignty is absolute, practically it is a question of strength and of varying degree; and it is for a new sovereign to decide how far it will insist upon theoretical relations of the subject to the former sovereign and how far it will recognize actual facts.

The acquisition of the Philippines was not for the purpose of acquiring the lands occupied by the inhabitants, and under the Organic Act of July 1, 1902, c. 1369, 32 Stat. 691, providing that property rights are to be administered for the benefit of the inhabitants, one who actually owned land for many years cannot be deprived of it for failure to comply with certain ceremonies prescribed either by the acts of the Philippine Commission or by Spanish law.

The Organic Act of the Philippines made a bill of rights embodying safeguards of the Constitution, and, like the Constitution, extends those safeguards to all.

Every presumption of ownership is in favor of one actually occupying land for many years, and against the Government which seeks to deprive him of it, for failure to comply with provisions of a subsequently enacted registration act.

Title by prescription against the crown existed under Spanish law in force in the Philippine Islands prior to their acquisition by the United States, and one occupying land in the Province of Benguet for more than fifty years before the Treaty of Paris is entitled to the continued possession thereof.

7 Philippine Rep. 132, reversed.

The facts are stated in the opinion.

Mr. Frederic R. Coudert and *Mr. Howard Thayer Kingsbury*, with whom *Mr. D. R. Williams* and *Mr. Charles C. Cohn* were on the brief, for plaintiff in error:

The Land Registration Court had jurisdiction of the subject-matter under act No. 496, §§ 2, 19; and its decision was legal, just and in conformity with the protection of private property provision of the Treaty of Paris. Public Land Act, No. 926. This court has jurisdiction and writ of error is the proper method.

The proceeding is one *in rem* and not *in personam* as it deals with titles to real estate. See § 705, Rev. Stat.; 27 Stat. 434; 31 Stat. 1189, 1227; *Ormsby* v. *Webb*, 134 U. S. 47; *Met. Railroad Co.* v. *Dist. of Columbia*, 195 U. S. 322; *Steinmetz* v. *Allen*, 192 U. S. 543; *Lowry* v. *Allen*, 203 U. S. 476; *Smith* v. *Whitney*, 116 U. S. 167; *Massie* v. *Watts*, 6 Cranch, 148, 158; *Boston Mining Co.* v. *Montana Ore Co.*, 188 U. S. 632, 641; Philippine Code Civ. Pro., Act 190, Phil. Com., § 498.

The land belonged to Cariño under the Igorot law. He had inherited it from his ancestors in accordance with the native customs and his title had never been questioned. The Spanish law explicitly recognized and scrupulously protected the Indian titles. Possession of land under such circumstances confers a property right *jure gentium* independently of any rule of prescription.

Spanish law recognized and protected rights of the native occupants of its Indian possessions even more fully and scrupulously than our Government has done in the case of its Indian wards. See Arthur Helps, Spanish Conquest in America.

Claimant having actually possessed the land in question for more than thirty years had acquired, under the Spanish Civil Code, good prescriptive title. The provisions of this Code as to prescription apply to all lands in the Philippine Islands regardless of whether owned by the Government or not, just as they admittedly do in the Spanish Peninsula itself.

The provisions of the Civil Code applied to public agricultural lands as well as to other lands, and a detailed examination of the provisions relating to public lands shows no intention on the part of the Government to except them from the purview of the Code enactments as to prescription, but on the contrary recognize the applicability of the common or general law. *Valenton* v. *Murciano*, 3 Philippine, 537, to the effect that public agricultural lands were not within the purview of the Code provisions, is unsound, inconsistent with other decisions of that court, and can be distinguished. Phil. Com. Rep. 1902, Part I, 183; Census of Philippine Islands, 1903, Vol. 1, 533; Phil. Com. Rep. 1904, Pt. I, 57; 1905, Pt. I, 176; "1 Bontoc Igorot," by Albert Ernest Jenks, Ethnological Survey Publication, Interior Dept., Manila, P. I., 1905; *United States* v. *Paine Lumber Co.*, 206 U. S. 467; *Lone Wolf* v. *Hitchcock*, 187 U. S. 564; *Doe* v. *Wilson*, 23 How. 463; "Laws of the Indies," Book 6, Title 1, Law 1; and see in Book 6, Title 1, Laws 15, 23, 27, 30, 32; Book 6, Title 3, Laws 9, 26; Book 2, Title 1, Laws 4, 5; Book 4, Title 1, Laws 6, 8, 10; Book 4,

Title 12, Laws 5, 7, 9, 14, 16, 17, 18, 19; Justinian Code, Book 7, Title 37, c. 1; Book 7, Title 39, c. 4, c. 9; Royal Decree, February 31, 1889; 2 Alcubilla (5th ed.), 692; Third Partida, Title 29, Laws 7, 18, 21.

Translation of the Civil Code in force in Cuba, Porto Rico, and the Philippines, 1893, War Dept. 1899, Arts. 339, 340, 342, 345; and Arts. 1930–6, 1959; *Rosa* v. *Natalio*, 7 Philippine, 556; Francisco Aragon Gonzalez, decided by Supreme Court Spain, April 16, 1881; 46 Jurisprudencia Civil, 9; Madrid, 1882; 3 Sanchez Roman, p. 277, and Alcubilla, 1906, 602; The Sixth Partida, Title 19, Law 10; The Novisima Recopilacion, Book XI, Title 8, Law 4; Ordenanzas Reales de Castilla, Book III, Title 13, L. VI; Bracton, Lib. 2, c. 5, § 7, as cited by Story, J., in *United States* v. *Hoar*, 2 Mason, 311; *S. C.* Fed. Cas. No. 15,373; Pollock & Maitland, Hist. Eng. Law, Vol. I, 572; Vol. II, 144; Statute of 9 Geo. III, 3, c. 16, *Valenton* v. *Murciano*, 3 Philippine, 540; Philippine "Mortgage Law," § 389; Royal Cedula of October 15, 1754; Royal Decree of June 25, 1880, Arts. 4 and 5; "Guia de Compradores de Terrenos Baldios y Realengos de Filipinas," Berriz, 1886, pp. 17–23; Spanish Civil Code, Arts. 348, 467, 1930, 1940, 1952, 1959, *et seq.*; "Land Registration Act" of 1902, § 19, Cl. 1st; Law 1 and Law 2, Title 34, Book II, Novisima Recopilacion; Alcubilla, Vol. 8, p. 776, note 4; Art. X, Const. of Spain, June 30, 1876; Art. VIII, Regulations of 1880.

Cariño had a legal title under the Civil Code. Registration was a mere procedural formality and did not create property. In any event, he had a right of property under Spanish law which was protected by the Treaty of Paris. *Buenaventura* v. *Commanding General*, 6 Philippine, 601; Treaty of Paris; Compilation of Treaties, 1904, 725; *Delassus* v. *United States*, 9 Peters, 133; Act temporarily to provide for the affairs of civil government in Philippine Islands, July, 1902, §§ 12, 14, 16; Public Land Act, No. 926, Comp. Laws and Regulations of Public Lands in Philippine Islands War Dept., Bureau of Insular Affairs, 1908, Chapter VI, § 54; Compilation of Laws and Regulations relating to Public Lands in the Philippine Islands.

Government Ptg. Office, February 1, 1908; 3 Philippine, 543; 6 Philippine, 606; *Strother* v. *Lucas* (1838), 12 Peters, 436; Philippine Code Civ. Pro., § 41; Circular of August 10, published in the Gaceta de Manila, August 11, 1881; Royal Decree of September 24, 1884, Art. 11; Royal Decree of February 13, 1894, Art. 4, § 21.

The Solicitor General, with whom *Mr. Paul Charlton* was on the brief, for defendant in error:

The court is without jurisdiction on writ of error. It can only take jurisdiction on appeal. § 10, act of July 1, 1902; 32 Stat. 691. This court can only review actions at law pending in Circuit Courts by writ of error and proceedings in equity only by appeal. The proceedings for the adjudication and registration of titles to lands in the Philippine Islands are in their nature actions in equity rather than actions at law. Act No. 496, Philippine Commission, §§ 2, 14, 16, 21, 35–38, 40. See *Holland* v. *Challen*, 110 U. S. 15; *Clark* v. *Smith*, 13 Pet. 195; *Dower* v. *Richards*, 151 U. S. 658; *Chase* v. *United States*, 155 U. S. 480.

Plaintiff in error possessed no title in the lands at the date of the change of sovereignty from Spain to the United States. During the period of Spanish sovereignty the tribe of Igorots had not been segregated from the body of the Philippine people as to the operation of the general law; no reservation of land was set aside for them, nor did the Spanish Government interfere in their internal tribal affairs. The status of the Igorot in his relation to the Spanish laws is not analogous to that of the American Indian in relation to the laws of the United States, and the cases affecting the tribal rights of Indians have no application to any rights of plaintiff in error, *jure gentium* or otherwise.

Plaintiff's claim of title advanced in the Philippine courts, based mainly upon "prescription" as valid against the Crown of Spain and therefore surviving the change of sovereignty and requiring to be recognized under the Treaty of Paris, is untenable under Spanish law. While that law made ample pro-

vision for the protection of rights claimed under ancient possession, it was in each case necessary that evidence of title should be submitted to the proper administrative officials. 4 Recopilacion de Leyes de las Indias, law 1, title 12; *Id.*, law 8; *Id.*, law 14; 4 Legislacion Ultramarina, 673; arts. 3, 4, 5; *Id.*, p. 688; Gaceta de Manila, Nov. 15, 1864; Guia del Comprador Terrenos, p. 5; Gaceta de Manila, Sept. 10, 1880; *Id.*, Aug. 11, 1881; *Id.*, April 17, 1894; see also *Valenton* v. *Murciano*, 3 Phil. Rep. 537; *Cansino* v. *Valdez*, 6 Phil. Rep. 320; *Tiglao* v. *Insular Government*, 7 Phil. Rep. 80. The Spanish law in force when the United States took possession of the Philippines required that all persons claiming title to public lands by prescription should, long prior to that date, have presented and proved their claims, complied with the legal regulations, and secured title by administrative adjudication, upon penalty of becoming mere trespassers and subject to ejectment. Plaintiff in error did not comply with these requirements, the time within which he could have done so had long passed, and he was therefore in the eyes of the law a trespasser on the public lands of the Philippine Islands at the date when the islands passed to the sovereignty of the United States. Under the accepted principles of international law the local laws of Spain applicable to the Philippines, including the mortgage law and the Civil Code, were continued in force by the Government of the United States upon the cession of the islands, so far as they were not incompatible with the fundamental principles of our Government. *American Ins. Co.* v. *Canter*, 1 Pet. 511; *Cross* v. *Harrison*, 16 How. 164; *Leitensdorfer* v. *Webb*, 20 How. 176.

The situation of plaintiff in error has not been changed by legislation of the United States or of the Philippine Islands since the change of sovereignty. The act of March 2, 1901, 31 Stat. 910, continued the status of the public lands until further action by Congress. The organic act of July 1, 1902, empowered the Philippine Government created thereby to promulgate rules and regulations governing the public lands. In pursuance of the powers so conferred, the Philippine Gov-

ernment established a court of land registration and prescribed such rules and regulations. Philippine Acts, Nos. 496, 926. These were, however, suspended as to the Province of Benguet in which the land in controversy is situated, and for that reason there was no forum in which plaintiff could have legally established the title he claimed. Accordingly the court of Land Registration in attempting to hear and determine his rights was without jurisdiction. This land was a military reservation of the United States, and military and other reservations were excepted from the provision of the organic act that property acquired from Spain should be administered for the benefit of the inhabitants of the Philippines. Further, in reference to the sale of public lands to actual occupants or settlers and others, as in reference to perfecting title to those who prior to the transfer of sovereignty had fulfilled all or some of the conditions required by the Spanish law for the acquisition of legal title, yet had failed to secure conveyance of title, there is an express restriction to an area of 16 hectares, and the tract here contains 150 hectares. Sections 12, 16, act of July 1, 1902, 32 Stat. 691, 695, 696.

MR. JUSTICE HOLMES delivered the opinion of the court.

This was an application to the Philippine Court of Land Registration for the registration of certain land. The application was granted by the court on March 4, 1904. An appeal was taken to the Court of First Instance of the Province of Benguet, on behalf of the Government of the Philippines and also on behalf of the United States, those Governments having taken possession of the property for public and military purposes. The Court of First Instance found the facts and dismissed the application upon grounds of law. This judgment was affirmed by the Supreme Court, 7 Philippine, 132, and the case then was brought here by writ of error.

The material facts found are very few. The applicant and plaintiff in error is an Igorot of the Province of Benguet, where the land lies. For more than fifty years before the Treaty of

Paris, April 11, 1899, as far back as the findings go, the plaintiff and his ancestors had held the land as owners. His grandfather had lived upon it, and had maintained fences sufficient for the holding of cattle, according to the custom of the country, some of the fences, it seems, having been of much earlier date. His father had cultivated parts and had used parts for pasturing cattle, and he had used it for pasture in his turn. They all had been recognized as owners by the Igorots, and he had inherited or received the land from his father in accordance with Igorot custom. No document of title, however, had issued from the Spanish Crown, and although in 1893–1894, and again in 1896–1897, he made application for one under the royal decrees then in force, nothing seems to have come of it, unless, perhaps, information that lands in Benguet could not be conceded until those to be occupied for a sanatorium, etc., had been designated, a purpose that has been carried out by the Philippine Government and the United States. In 1901 the plaintiff filed a petition, alleging ownership, under the mortgage law, and the lands were registered to him, that process, however, establishing only a possessory title, it is said.

Before we deal with the merits we must dispose of a technical point. The Government has spent some energy in maintaining that this case should have been brought up by appeal and not by writ of error. We are of opinion, however, that the mode adopted was right. The proceeding for registration is likened to bills in equity to quiet title, but it is different in principle. It is a proceeding *in rem* under a statute of the type of the Torrens Act, such as was discussed in *Tyler* v. *Court of Registration*, 175 Massachusetts, 71. It is nearer to law than to equity, and is an assertion of legal title; but we think it unnecessary to put it into either pigeon hole. A writ of error is the general method of bringing cases to this court, an appeal the exception, confined to equity in the main. There is no reason for not applying the general rule to this case. *Ormsby* v. *Webb*, 134 U. S. 47, 65; *Campbell* v. *Porter*, 162 U. S. 478; *Metropolitan R. R. Co.* v. *District of Columbia*, 195 U. S. 322.

POOR COP

Another preliminary matter may as well be disposed of here. It is suggested that even if the applicant have title he cannot have it registered, because the Philippine Commission's Act No. 926, of 1903, excepts the Province of Benguet among others from its operation. But that act deals with the acquisition of new titles by homestead entries, purchase, etc., and the perfecting of titles begun under the Spanish law. The applicant's claim is that he now owns the land and is entitled to registration under the Philippine Commission's Act No. 496, of 1902, which established a court for that purpose with jurisdiction "throughout the Philippine Archipelago," § 2, and authorized in general terms applications to be made by persons claiming to own the legal estate in fee simple, as the applicant does. He is entitled to registration if his claim of ownership can be maintained.

We come then to the question on which the case was decided below, namely, whether the plaintiff owns the land. The position of the Government, shortly stated, is that Spain assumed, asserted and had title to all the land in the Philippines except so far as it saw fit to permit private titles to be acquired; that there was no prescription against the Crown, and that if there was, a decree of June 25, 1880, required registration within a limited time to make the title good; that the plaintiff's land was not registered and therefore became, if it was not always, public land; that the United States succeeded to the title of Spain, and so that the plaintiff has no rights that the Philippine Government is bound to respect.

If we suppose for the moment that the Government's contention is so far correct that the Crown of Spain in form asserted a title to this land at the date of the Treaty of Paris, to which the United States succeeded, it is not to be assumed without argument that the plaintiff's case is at an end. It is true that Spain in its earlier decrees embodied the universal feudal theory that all lands were held from the Crown, and perhaps the general attitude of conquering nations toward people not recognized as entitled to the treatment accorded to those

in the same zone of civilization with themselves. It is true also that in legal theory sovereignty is absolute, and that as against foreign nations, the United States may assert, as Spain asserted, absolute power. But it does not follow that as against the inhabitants of the Philippines the United States asserts that Spain had such power. When theory is left on one side sovereignty is a question of strength and may vary in degree. How far a new sovereign shall insist upon the theoretical relation of the subjects to the head in the past and how far it shall recognize actual facts are matters for it to decide.

The Province of Benguet was inhabited by a tribe that the Solicitor General, in his argument, characterized as a savage tribe that never was brought under the civil or military government of the Spanish Crown. It seems probable, if not certain, that the Spanish officials would not have granted to any one in that province the registration to which formerly the plaintiff was entitled by the Spanish laws, and which would have made his title beyond question good. Whatever may have been the technical position of Spain, it does not follow that, in the view of the United States, he had lost all rights and was a mere trespasser when the present Government seized his land. The argument to that effect seems to amount to a denial of native titles throughout an important part of the island of Luzon, at least, for the want of ceremonies which the Spaniards would not have permitted and had not the power to enforce.

The acquisition of the Philippines was not like the settlement of the white race in the United States. Whatever consideration may have been shown to the North American Indians, the dominant purpose of the whites in America was to occupy the land. It is obvious that, however stated, the reason for our taking over the Philippines was different. No one, we suppose, would deny that, so far as consistent with paramount necessities, our first object in the internal administration of the islands is to do justice to the natives, not to exploit their country for private gain. By the organic act of July 1, 1902, c. 1369, § 12, 32 Stat. 691, all the property and rights acquired there by the

United States are to be administered "for the benefit of the inhabitants thereof." It is reasonable to suppose that the attitude thus assumed by the United States with regard to what was unquestionably its own is also its attitude in deciding what it will claim for its own. The same statute made a bill of rights embodying the safeguards of the Constitution, and, like the Constitution, extends those safeguards to all. It provides that "no law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws." § 5. In the light of the declaration that we have quoted from § 12, it is hard to believe that the United States was ready to declare in the next breath that "any person" did not embrace the inhabitants of Benguet, or that it meant by "property" only that which had become such by ceremonies of which presumably a large part of the inhabitants never had heard, and that it proposed to treat as public land what they, by native custom and by long association, one of the profoundest factors in human thought, regarded as their own.

It is true that by § 14 the Government of the Philippines is empowered to enact rules and prescribe terms for perfecting titles to public lands where some but not all Spanish conditions had been fulfilled, and to issue patents to natives for not more than sixteen hectares of public lands actually occupied by the native or his ancestors before August 13, 1898. But this section perhaps might be satisfied if confined to cases where the occupation was of land admitted to be public land and had not continued for such a length of time and under such circumstances as to give rise to the understanding that the occupants were owners at that date. We hesitate to suppose that it was intended to declare every native who had not a paper title a trespasser and to set the claims of all the wilder tribes afloat. It is true again that there is excepted from the provision that we have quoted as to the administration of the property and rights acquired by the United States, such land and property as shall be designated by the President for military or other reser-

vations, as this land since has been. But there still remains the question what property and rights the United States asserted itself to have acquired.

Whatever the law upon these points may be, and we mean to go no further than the necessities of decision demand, every presumption is and ought to be against the Government in a case like the present. It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land. Certainly in a case like this if there is doubt or ambiguity in the Spanish law we ought to give the applicant the benefit of the doubt. Whether justice to the natives and the import of the organic act ought not to carry us beyond a subtle examination of ancient texts, or perhaps even beyond the attitude of Spanish law, humane though it was, it is unnecessary to decide. If, in a tacit way, it was assumed that the wild tribes of the Philippines were to be dealt with as the power and inclination of the conqueror might dictate, Congress has not yet sanctioned the same course as the proper one "for the benefit of the inhabitants thereof."

If the applicant's case is to be tried by the law of Spain we do not discover such clear proof that it was bad by that law as to satisfy us that he does not own the land. To begin with, the older decrees and laws cited by the counsel for the plaintiff in error seem to indicate pretty clearly that the natives were recognized as owning some lands, irrespective of any royal grant. In other words, Spain did not assume to convert all the native inhabitants of the Philippines into trespassers or even into tenants at will. For instance, Book 4, Title 12, Law 14 of the Recopilacion de Leyes de las Indias, cited for a contrary conclusion in *Valenton* v. *Murciano*, 3 Philippine, 537, while it commands viceroys and others, when it seems proper, to call for the exhibition of grants, directs them to confirm those who hold by good grants or *justa prescripcion*. It is true that it

begins by the characteristic assertion of feudal overlordship and the origin of all titles in the king or his predecessors. That was theory and discourse. The fact was that titles were admitted to exist that owed nothing to the powers of Spain beyond this recognition in their books.

Prescription is mentioned again in the royal cedula of October 15, 1754, cited in 3 Philippine, 546: "Where such possessors shall not be able to produce title deeds it shall be sufficient if they shall show that ancient possession, as a valid title by prescription." It may be that this means possession from before 1700, but at all events the principle is admitted. As prescription, even against crown lands, was recognized by the laws of Spain, we see no sufficient reason for hesitating to admit that it was recognized in the Philippines in regard to lands over which Spain had only a paper sovereignty.

The question comes however on the decree of June 25, 1880, for the adjustment of royal lands wrongfully occupied by private individuals in the Philippine Islands. This begins with the usual theoretic assertion that for private ownership there must have been a grant by competent authority, but instantly descends to fact by providing that for all legal effects those who have been in possession for certain times shall be deemed owners. For cultivated land, twenty years uninterrupted is enough. For uncultivated, thirty. Art. 5. So that when this decree went into effect the applicant's father was owner of the land by the very terms of the decree. But it is said, the object of this law was to require the adjustment or registration proceedings that it described, and in that way to require every one to get a document of title or lose his land. That purpose may have been entertained, but it does not appear clearly to have been applicable to all. The regulations purport to have been made "for the adjustment of royal lands wrongfully occupied by private individuals." (We follow the translation in the Government's brief.) It does not appear that this land ever was royal land or wrongfully occupied. In art. 6 it is provided that "interested parties, not included within the two preceding

articles [the articles recognizing prescription of twenty and thirty years] may legalize their possession, and thereby acquire the full ownership of the said lands, by means of adjustment proceedings, to be conducted in the following manner." This seems by its very terms not to apply to those declared already to be owners by lapse of time. Article 8 provides for the case of parties not asking an adjustment of the lands of which they are unlawfully enjoying the possession, within one year, and threatens that the treasury "will reassert the ownership of the State over the lands," and will sell at auction such part as it does not reserve. The applicant's possession was not unlawful and no attempt at any such proceedings against him or his father ever was made. Finally, it should be noted that the natural construction of the decree is confirmed by the report of the Council of State. That report puts forward as a reason for the regulations that, in view of the condition of almost all property in the Philippines, it is important to fix its status by general rules on the principle that the lapse of a fixed period legalizes completely all possession; recommends in two articles twenty and thirty years, as adopted in the decree; and then suggests that interested parties not included in those articles may legalize their possession and acquire ownership by adjustment at a certain price.

It is true that the language of arts. 4 and 5 attributes title to those "who may prove" possession for the necesssary time, and we do not overlook the argument that this means may prove in registration proceedings. It may be that an English conveyancer would have recommended an application under the foregoing decree, but certainly it was not calculated to convey to the mind of an Igorot chief the notion that ancient family possessions were in danger, if he had read every word of it. The words "may prove," (*acrediten*), as well, or better, in view of the other provisions, might be taken to mean when called upon to do so in any litigation. There are indications that registration was expected from all, but none sufficient to show that for want of it ownership actually gained would be lost.

The effect of the proof wherever made was not to confer title, but simply to establish it, as already conferred by the decree, if not by earlier law. The royal decree of February 13, 1894, declaring forfeited titles that were capable of adjustment under the decree of 1880, for which adjustment had not been sought should not be construed as a confiscation, but as the withdrawal of a privilege. As a matter of fact, the applicant never was disturbed. This same decree is quoted by the Court of Land Registration for another recognition of the common law prescription of thirty years as still running against alienable crown land.

It will be perceived that the rights of the applicant under the Spanish law present a problem not without difficulties for courts of a different legal tradition. We have deemed it proper on that account to notice the possible effect of the change of sovereignty and the act of Congress establishing the fundamental principles now to be observed. Upon a consideration of the whole case we are of opinion that law and justice require that the applicant should be granted what he seeks, and should not be deprived of what, by the practice and belief of those among whom he lived, was his property, through a refined interpretation of an almost forgotten law of Spain.

Judgment reversed.